

No. 14739

United States
Court of Appeals
for the Ninth Circuit

ROLLAND LINDSEY, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Transcript of Record

In Two Volumes
VOLUME I.
(Pages 1 to 272, inclusive.)

Appeal from the District Court for the District of Alaska,
First Division

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,
Division Number One, at Ketchikan

No. 1643-KB

UNITED STATES OF AMERICA, Plaintiff,
vs.
ROLLAND LINDSEY, Defendant.

INDICTMENT

65-4-12 ACLA 1949 (Rape); 65-9-10 ACLA 1949
(Sodomy); Ch. 81 SLA 1953 (Influencing
Witness)

The Grand Jury Charges:

Count I—65-4-12 ACLA 1949 (Rape)

That on or about October 22, 1951 at Ketchikan in the District of Alaska and within the jurisdiction of this Court, Rolland Lindsey did wilfully, unlawfully and feloniously carnally know and abuse a female person under sixteen years of age, namely, Loretta Lindsey.

Count II—65-4-12 ACLA 1949 (Rape)

That on or about October 23, 1952, at Ketchikan in the District of Alaska and within the jurisdiction of this Court, Rolland Lindsey did wilfully, unlawfully and feloniously carnally know and abuse a female person under sixteen years of age, namely, Loretta Lindsay.

Count III—65-4-12 ACLA 1949 (Rape)

That on or about February 27, 1954, at Ketchikan in the District of Alaska and within the jurisdic-

tion of this Court, Rolland Lindsey did wilfully, unlawfully and feloniously carnally know and abuse a female person under sixteen years of age, namely, Loretta Lindsey.

Count IV—65-9-10 ACLA 1949 (Sodomy)

That on or about the 22d day of October, 1951, at Ketchikan in the District of Alaska and within the jurisdiction of this Court, Rolland Lindsey did wilfully and feloniously have unnatural carnal copulation by means of the mouth with Loretta Lindsey.

Count V—65-9-10 ACLA 1949 (Sodomy)

That on or about the 23d day of October, 1952 at Ketchikan in the District of Alaska and within the jurisdiction of this Court, Rolland Lindsey did wilfully and feloniously have unnatural carnal copulation by means of the mouth with Loretta Lindsey.

Count VI—65-9-10 ACLA 1949 (Sodomy)

That on or about the 27th day of February, 1954, at Ketchikan in the District of Alaska and within the jurisdiction of this Court, Rolland Lindsey did wilfully and feloniously have unnatural carnal copulation by means of the mouth with Loretta Lindsey.

Count VII—Ch. 81 SLA 1953
(Influencing Witness)

That on or about the 25th day of August, 1954, at Ketchikan in the District of Alaska and within the

jurisdiction of this Court, Rolland Lindsey corruptly endeavored to influence a witness in the District Court for the District of Alaska, to wit: Loretta Lindsey, then and there duly subpoenaed to appear before the Grand Jury of the District Court for the District of Alaska.

A True Bill.

/s/ STUART RUSSELL,
Foreman

/s/ T. E. MUNSON,
United States Attorney

Witnesses: Loretta Lindsey, Florence Dalton.

[Endorsed]: Filed in Open Court Oct. 11, 1954.

[Title of District Court and Cause.]

MINUTE ORDER

Wednesday, October 13, 1954

Defendant appeared for arraignment and with A. H. Ziegler as counsel; C. Donald O'Connor, Assistant U. S. Attorney, appeared for the Government. Defendant was arraigned; reading of the Indictment was waived; as also was the time for entry of a plea. Defendant stated that his true name was as captioned above. He personally entered a plea of Not Guilty.

[Title of District Court and Cause.]

VERDICT

We, the Jury duly impaneled and sworn in the above entitled cause, find the defendant guilty of the crime charged in Count I of the Indictment; guilty of the crime charged in Count II of the Indictment; guilty of the crime charged in Count III of the Indictment; guilty of the crime charged in Count IV of the Indictment; guilty of the crime charged in Count V of the Indictment; guilty of the crime charged in Count VI of the Indictment; not guilty of the crime charged in Count VII of the Indictment.

Dated at Ketchikan, Alaska, this 26th day of November, 1954.

/s/ GLENN A. LANE,
Foreman

[Endorsed]: Filed November 27, 1954.

In the District Court for the District of Alaska,
Division Number One, at Ketchikan

No. 1643-KB

UNITED STATES OF AMERICA, Plaintiff,
vs.
ROLLAND LINDSEY, Defendant.

JUDGMENT AND COMMITMENT

On this 29th day of November, 1954 came the attorney for the Government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been found not guilty of the charge of Influencing a Witness, but has been convicted upon his plea of Not Guilty and a Finding of Guilty of the offense of Rape in violation of Section 65-4-12, ACLA 1949 as charged in the indictment filed in the above-entitled case, and has been convicted upon his plea of Not Guilty and a Finding of Guilty of the offense of Sodomy in violation of Section 65-9-10 ACLA 1949 as charged in the indictment filed in the above entitled case; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

It Is Adjudged that the defendant is Guilty as charged and convicted of the crimes of Rape and Sodomy.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or

his authorized representative for imprisonment for a period of Twelve Years on Each of Three Counts of Rape and for a period of Ten Years on Each of Three Counts of Sodomy, Sentences to Run Concurrently.

It Is Ordered that the Clerk of this Court deliver a certified copy of this judgment and commitment to the United States Marshal, the Superintendent of the Federal Jail, or other qualified officer and to the defendant, and that the copies serve as the sentence of the defendant.

/s/ GEORGE W. FOLTA,
U. S. District Judge

[Endorsed]: Filed December 3, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant: Rolland Lindsey, 1067 Woodland Avenue, Ketchikan, Alaska.

Counts One, Two and Three, Rape; Counts Four, Five and Six, Sodomy.

Concise Statement of Judgment: Judgment entered on November 29th, 1954, sentencing defendant for a period of 12 years on each of Counts One, Two and Three, the same to run concurrently; and, ten years on each of Counts Four, Five and Six, the same to run concurrently and also concurrently with the sentence imposed on Counts One, Two and Three, or a total of 12 years. Defendant was ad-

judged guilty before sentencing in accordance with jury's verdict, and upon sentencing was committed to the custody of the Attorney General of the United States.

Defendant now in custody and moves for admission to bail pending appeal.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated Judgment.

Dated at Ketchikan, Alaska, December 4, 1954.

/s/ ROLLAND E. LINDSEY,
Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed December 4, 1954.

[Title of District Court and Cause.]

MOTION FOR ADMISSION TO BAIL

Comes now the above named defendant, Rolland E. Lindsey, and respectfully petitions the Court for his admission to bail pending the appeal of the above case to the Ninth Circuit Court of Appeals, and shows the Court,

That he has filed his Notice of Appeal from the judgment entered in the above cause, on November 29th, 1954, within the time provided by law; that he is advised by counsel that there is a substantial question of law involved in the above cause, and that he in good faith intends to prosecute his appeal and that this Motion is made in good faith.

This Motion is based upon the records and files in this suit, and the evidence adduced at the trial wherein the tape recording of Loretta Lindsey, the prosecuting witness, was admitted in evidence over the objection of defendant's counsel, and the witness Dr. Charles Anderson, for plaintiff, was permitted to testify concerning his opinion arising in part out of the tape recording of said Loretta Lindsey's testimony while under the influence of a so-called Truth Serum Drug.

Dated at Ketchikan, Alaska, December 7th, 1954.

/s/ ROLLAND E. LINDSEY,
Defendant

ORDER

Upon reading the foregoing Motion, the Court finds there does exist a substantial question of law, on appeal, in the above cause, and defendant is admitted to bail in the sum of \$15,000.

Dated at Ketchikan, Alaska, December 7th, 1954.

/s/ GEORGE W. FOLTA,
Judge

Acknowledgment of Service attached.

[Endorsed]: Filed December 7, 1954.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, J. W. Leivers, Clerk of the District Court for the Territory of Alaska, First Division thereof, do

hereby certify that the hereto attached pleadings are the original pleadings and Orders of the Court filed in the above-entitled cause and are the ones designated by the parties hereto to constitute the record on appeal herein.

In Witness Whereof, I have hereunto set my hand and caused the seal of the above-entitled court to be affixed at Ketchikan, Alaska, this 22nd day of April, 1955.

[Seal]

J. W. LEIVERS,

Clerk of District Court

/s/ By A. V. SIMONSEN,

Deputy Clerk

In the United States District Court for the District
of Alaska, Division No. 1, at Ketchikan

No. 1643-KB

UNITED STATES OF AMERICA, Plaintiff,

vs.

ROLLAND EARL LINDSEY, Defendant.

TRANSCRIPT OF PROCEEDINGS

Be It Remembered, that on the 22nd day of November, 1954, at 10:00 o'clock a.m., at Ketchikan, Alaska, the above-entitled cause came on for trial before a jury; the Honorable George W. Folta, United States District Judge, presiding; the Government appearing by Theodore E. Munson, United States Attorney, and C. Donald O'Connor, Assist-

ant United States Attorney; the defendant appearing in person and by A. H. Ziegler and Patrick J. Gilmore, Jr., his attorneys; respective counsel having announced they were ready for trial, a jury was duly empanelled and sworn to try the cause and was duly admonished by the Court; thereupon Court was recessed until 2:00 o'clock p.m., reconvening as per recess, with all parties present as heretofore, and the jury all present in the box; whereupon the following proceedings were had:

The Court: The prosecution may make its opening statement. [1*]

Mr. Munson: Your Honor, before beginning the opening statement, I would like to move that because of the nature of this case and the tender years of the complaining witness that the public be excluded during the opening statements and during the time that she testifies on the stand.

The Court: Well, that is because of her reluctance, you mean?

Mr. Munson: Yes, your Honor.

The Court: Well, the Court will pass on that after the opening statements are made. You may proceed with your opening statement.

Whereupon opening statements were made by respective counsel; and thereupon the following proceedings were had:

The Court: Now, does either party have any request to make as to who should be excluded or

* Page numbers appearing at foot of page of original Reporter's Transcript of Record.

excepted from the exclusion order that the Court is about to make.

Mr. Munson: Your Honor, I would like Doctor Anderson to be excepted from the exclusion order.

The Court: Well, is he going to be of any assistance to you here?

Mr. Munson: I believe he will, your Honor. He is going to give expert testimony based on the hypothetical questions.

The Court: Is there anyone that is closely related to the prosecuting witness that you think should be here? [2]

Mr. Munson: Yes, your Honor. Mrs. Dalton is her aunt.

The Court: Has the defendant any close relatives or friends that he wishes to remain?

Mr. Gilmore: Well, my only reaction, your Honor—we haven't given this hardly any thought—would be that with reference to the exclusion or the exception of Doctor Anderson to the exclusion order that it would be our duty and responsibility to object, I would think.

The Court: Well, but don't forget I am not excluding witnesses. It is the public that is being excluded.

Mr. Gilmore: Well, we have no objection to the public.

The Court: Well, I just thought that perhaps the defendant might have some close relative or very close friend that he would like to have in court here. I don't know.

Mr. Gilmore: Well, his wife; she is his closest.

The Court: She will be excepted from the order.

Mr. Gilmore: Thank you.

Mr. Ziegler: There is just one thing; if the Court please, as long as that part of the case is going to be subject to that rule, I think the exclusion order should apply throughout the trial.

Mr. Munson: We have no objection.

Mr. Ziegler: I think, your Honor, it will facilitate [3] the trial probably.

The Court: Well, but why should the spectators be excluded except when the testimony of this prosecuting witness is being received. It doesn't differ from any other case otherwise, so I can only——

Mr. Ziegler: Well, our position is this, your Honor, that the excluding of them during part of the time, if that is done, they should be excluded all of the time during the trial or none of the time. In other words, if it is going to be a public trial, then they should never be excluded at any time.

The Court: Well, that merely ignores the reason underlying the exclusion of the general public.

Mr. Munson: Your Honor, I believe the reason for the exclusion is because this witness is extremely reluctant to testify to these——

The Court: The reason has already been stated—the tender age and the embarrassment and reluctance of the prosecuting witness.

Mr. Ziegler: If the Court please, the same thing applies to the defendant when he testifies. It is embarrassing to him.

The Court: Well, it may be, except that the decisions don't support excluding the public on his account because he is an adult. The same would be

true if the [4] prosecuting witness were an adult; I couldn't exclude the public over objection.

Mr. Ziegler: The Court understands our position?

The Court: Yes. Well, on the motion of the United States the Court is going to have to exclude the general public from the courtroom while the prosecuting witness, which is the first witness to be called, I presume, is going to take the witness stand, except that officers of the law are not within the order; representatives of the press may remain here and personnel of the Court, the wife of the defendant and Mrs. Dalton and the prosecuting witness herself; all others will have to leave the courtroom.

Mr. Munson: Your Honor, Doctor Anderson, could he stay too?

The Court: Yes; Doctor Anderson may remain.

Reverend Lewis Hodgkins: The plaintiff is a member of my church, and I would like to request permission to stay.

The Court: You should speak through counsel. If you are aligned with one side or the other, you should consult with counsel and have counsel make the request for you.

Mr. Munson: Your Honor, I request that the complaining witness' brother be allowed to remain in the courtroom.

The Court: Very well.

Mr. Ziegler: If the Court please, as I understand it, then all witnesses can remain in the courtroom? [5]

The Court: Witnesses have not been excluded.

Mr. Gilmore: Then there is no exclusion order on witnesses?

The Court: No. Just the general public.

Mr. Gilmore: That leaves the problem of the Reverend.

The Court: He is a witness, is he?

Mr. Ziegler: Not that I know, your Honor. He has stated his position. Of course, he hasn't asked us to appear for him, but surely, so far as the defendant in this case is concerned, and I don't know how he stands with regard to it, we have no objection to his remaining in the courtroom.

The Court: I thought perhaps he was associated with one side or the other.

Mr. Ziegler: Not to my knowledge.

The Court: But, if he is not, then I would like to have him state his reasons why he thinks he should be allowed to remain.

Reverend Lewis Hodgkins: The family of the Lindseys and the Pawseys are members of our St. Elizabeth's Church, of which I am priest in charge, and it is of concern to me how the whole case goes.

Mr. Munson: Your Honor, I object to the Reverend's being here. I think that, if he has any concern with the spiritual side of the complaining witness and so forth, he [6] can do that at another time. I believe that the nature of the case would make her very uncomfortable with a reverend in the audience.

The Court: Well, what do you think about the statement made by the United States Attorney as

to the fact that the complaining witness might feel uncomfortable in your presence? Perhaps I should ask you this question. Have you taken sides in this case?

Reverend Lewis Hodgkins: I have tried to take neither one side nor the other.

The Court: Do you think you are absolutely neutral?

Reverend Lewis Hodgkins: I try to be.

The Court: Have you advised one side or the other?

Reverend Lewis Hodgkins: No, sir.

The Court: Well, it all depends then upon whether the prosecuting witness would feel uncomfortable and embarrassed in having him present.

Mr. Munson: Would you feel embarrassed in having the Reverend here, Loretta?

Loretta Lindsey: No.

The Court: You may remain then.

Reverend Lewis Hodgkins: Thank you.

Mr. Munson: For the record, your Honor, did you say that the press would not be excluded?

The Court: I have excluded the press—to make it [7] plainer perhaps I should use the word “excepted”. I have excepted the press from the exclusion order, representatives of the press, as well as officers of the court, officers of the law and personnel of the court.

Mr. Munson: Thank you, your Honor.

The Court: You may call your first witness.

Plaintiff's Case

LORETTA LINDSEY

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Munson): Now in a good loud voice, state your name. A. Loretta Lindsey.

Q. How old are you, Loretta?

A. Fifteen.

Q. When did you turn fifteen?

A. September 15th of this year.

Q. Where do you live?

A. Right now?

Q. Yes.

A. I live with the McMasters.

Q. And that is in Ketchikan? A. Yes.

Q. How long have you lived in Ketchikan? [8]

A. All my life.

Q. Now, you were adopted at a rather early age, weren't you, Loretta? A. Yes.

Q. In fact you were adopted twice, weren't you?

A. Yes.

Q. Who adopted you the first time?

A. Mr. and Mrs. Lawrence Pawsey.

Q. Mr. and Mrs. Lawrence Pawsey?

A. Yes.

Q. Are they related to you?

A. Yes. He is my real uncle. Uncle of—I mean, brother of my real father.

Q. Brother to your father. Who adopted you the second time?

(Testimony of Loretta Lindsey.)

A. Mr. and Mrs. Rollie Lindsey.

Q. Are you related to either one of them?

A. Yes. Mrs. Lindsey is my real aunt.

Q. She is your real aunt? A. Yes.

Q. And who is she related to, your mother or your father? A. My father.

Q. Related to your father. How old were you when you were adopted by the Lindseys?

A. I went there when I was seven. I never knew when I was adopted. [9]

Q. Oh, you mean you went to live with them before the legal adoption; is that it?

A. That is the way I understand it.

Q. That is the way they told you. You were seven when you went to live with them?

A. Yes.

Q. Where was Bob?

A. He was living at my Gram's but he went away to school.

Q. Where did he go; do you know?

A. I think it was Wrangell Institute.

Q. How old is Bob, or how much older is Bob than you? A. Two years.

Q. He is two years older. And when you went to live with Mr. and Mrs. Lindsey you were about seven; is that right? A. Yes.

Q. When did—now, after you started to live with the Lindseys, did anything unusual happen with you and Rollie? A. Yes.

Q. What was that?

A. Well, he started—well, I think it was before

(Testimony of Loretta Lindsey.)

I was adopted, but, when I lived there, I went to bed, and my Mom, Mrs. Lindsey, went out or was busy doing something, and he would come in and lay down by me and he would put his fingers and rub them up and down my leg, up by the upper part of my thighs. [10]

Q. And is that all he did?

A. Well, he would stick his finger up—I don't know what you would call it.

Q. You mean into your private parts?

A. Yes.

Q. He did that when you were seven?

A. Yes.

Q. While you were in bed; is that what you are saying? A. Yes.

Q. He would come into your bedroom and do that? A. Yes.

Q. Did he do anything else afterward?

A. No.

Q. In later years? A. Yes.

Q. What was that?

A. Well, he would stick his head between my legs and he would kind of move his tongue around and suck, I guess.

Q. Started doing that? How old were you then?

A. Well, I was between eight and seven or eight and nine.

Q. Between seven and eight or between eight and nine. Did he do that very often?

A. No; not too often.

Q. Rather infrequent? Sometimes?

(Testimony of Loretta Lindsey.)

A. Yes. [11]

Q. Then what was the next sexual adventure?

A. He would stick his penis in my mouth and make me suck, and then I would, oh, I don't know——

Q. Where did you learn that word—penis?

A. I just know what it means.

Q. You have known what that meant?

A. Yes.

Mr. Ziegler: I didn't get the answer, please.

Mr. Munson: She said, "yes," she knew what it meant.

Q. (By Mr. Munson): And what would happen?

A. Well, when he stuck his penis in my mouth he was small, kind of small, but, when I kept on sucking, it got bigger and bigger, and he finally let some stuff go into my mouth.

Q. And then what would you do?

A. Then I would have to get up, and he would get up and go to the bathroom, and then I would have to get up and go spit that stuff out and wash my teeth.

Q. Where would you spit it?

A. Into the toilet or into the sink while I was washing out my mouth.

Mr. Ziegler: I didn't get that. I hate to interrupt, your Honor, but I didn't get the answer. What was the answer?

Court Reporter: A. "Into the toilet or into the [12] sink while I was washing out my mouth."

(Testimony of Loretta Lindsey.)

A. Well, I know that it happened but I can't remember the dates.

Q. Well, when did—well, during this time did he ever say anything to you about what would happen if you told of these things?

A. Yes. He told me, if I told anybody, that I would get in a lot of trouble and I would be sent away.

Q. Well, what else did he tell you, if anything, to explain his conduct?

A. Well, he said the reason why he was doing that was to get me ready, if I ever got married or something and somebody else wanted to do the same thing to me, that I would know what it was and what would happen.

Q. Were there ever any threatening statements made to you? [15] A. No.

Q. Did he ever mention what would happen to you if you told your mother, for example, or the police or the authorities?

A. No. He just told me I would get in trouble.

Q. Well, do you remember when it was that, the first time, that Rollie had actual intercourse with you, what the date was and the time?

A. Well, when my Mom went to the hospital; that was when she had her first baby.

Q. When was that?

A. October 22, 1951.

Q. October 22nd? A. Yes.

Q. Do you recall that day? A. Yes.

(Testimony of Loretta Lindsey.)

Q. Tell us about it now, from your first recollection of what happened.

A. Well, my Mom went to the hospital the night before. He wasn't in when she went to the hospital, and so we went over to my Aunt Flo's to stay overnight, and he called up during the night to say he was in, and so the next morning before we went to school we went home, and he wasn't there—I went home, and he wasn't there, and I went up to the hospital, and she was in the delivery room [16] and she had the baby, and so that afternoon when I went home from school he was home and he told me I had to stay home from school and do the washing, and so I did.

Q. What time was that?

A. That was in the afternoon.

Q. About what time; do you remember?

A. Around 1:00 o'clock.

Q. Where was Bob?

A. Bob was home but he had to go back to school.

Q. You mean he had to go back at 1:00 for the afternoon classes? A. Yes.

Q. And who was home at 1:00 o'clock?

A. Nobody by my Dad and I.

Q. Then what happened?

A. Then I started washing clothes, and he came in the bathroom where I was and he asked me if I wanted it, and I told him, "No."

Q. Did you know what he meant?

A. Yes.

(Testimony of Loretta Lindsey.)

Q. Had he used that expression before?

A. Yes.

Q. If you wanted it? A. Yes.

Q. Or some words to that effect? [17]

A. He never actually said anything else but that.

Q. "It", referring to a sexual act of some sort?

A. Yes.

Q. Go on.

A. And so I told him, "No," and so a little while later he came in and he asked me if I wanted it, and I was in the kitchen then and I told him, "No," and he grabbed me around my arms and he made me go in the bedroom and took off—I took off my pants like he told me to do, and he put his head between my legs and started moving his tongue around and sucking and then he made me put his penis in my mouth to get it wet so that rubber thing could go on.

Q. What rubber thing?

A. I guess you call them "Trojans" or something. And then he pushed me further back on the bed and he started moving up and down.

Q. Could you feel that? A. Yes.

Q. Was he inside of you? A. Yes.

Q. Could you definitely feel that?

A. Yes. It took him quite a while, and all of a sudden it just went in.

Q. Did it hurt? [18] A. Yes.

Q. Did you say anything to him?

A. No.

Q. Did you make any outcry? A. No.

(Testimony of Loretta Lindsey.)

Q. Well, is that all he did?

A. That is all he did then.

Q. That day? A. Yes.

Q. When was the next date that you can remember?

A. Well, it was—the next date I can remember was when she went to the hospital again to have her second baby.

Q. Well, in between those two dates did he ever have intercourse with you and commit these sodomy acts on you? A. Yes.

Q. How often?

A. Every time he was home.

Q. You mean every chance he got?

A. Yes.

Q. Well, how would he get alone with you?

A. You mean besides this?

Mr. Ziegler: That plane was running. Excuse me, Mr. Munson. I didn't hear that question.

Mr. Munson: I just asked her how he would be alone with her. [19]

A. What do you mean?

Q. (By Mr. Munson): Well, when would these acts of intercourse take place?

A. Well, it could be at night when my mother was sleeping, or it even could be when she was cooking supper.

Q. And when else would this happen at other times?

A. When she wasn't home and if she went to a meeting or something.

(Testimony of Loretta Lindsey.)

Q. Did Victoria go out in the evening quite a lot?

A. She only goes out on certain nights when they are having Bingo or Vets' meeting or visiting somebody.

Q. Did she go regularly to those?

A. Yes; quite regularly.

Q. Did Rollie ever have intercourse with you in the morning? A. Yes.

Q. And do you distinctly recall that between these two dates, October 22, 1951, and the date of the second child of Victoria's, that he had intercourse with you?

Mr. Ziegler: Now, if the Court please, we haven't objected, but I think that is too much leading. I realize that it is a witness, that some leading questions are allowed, but I think that is certainly leading.

Mr. Munson: I don't know how else to phrase it.

The Court: Will you repeat that question to me?

Court Reporter: Q. "And do you distinctly recall [20] that between these two dates, October 22, 1951, and the date of the second child of Victoria's, that he had intercourse with you?"

The Court: The objection is overruled. He is asking her whether they had intercourse during a certain period. It may be answered yes or no. You may answer the question.

A. Yes, he did.

Q. And you distinctly remember those?

A. I don't remember them but I know he did

(Testimony of Loretta Lindsey.)

because I know he would always—sometimes I would hear him come upstairs and sometimes I wouldn't, but, whenever he did, he would always go in to see if my brother was awake or something.

Q. You mean in the morning? A. Yes.

Q. Well, when is the next specific date that you recall?

A. October—I have already given you October 23rd, haven't I, 1952?

Q. I am sorry. I forgot it. And how do you remember that date?

A. Well, like I said, my Mom went to the hospital to have her second baby.

Q. Do you recall what happened that day?

A. Well, she had the baby at night, I know. Mrs. Smith came over—and Janice—it was when she was having my little sister—and came over to help us with Randy and things [21] like that, and she had a baby at nighttime, and, when he got home, I was in the front room doing my studying, and he came in and asked me if I wanted it, and I told him, "No," and so, since he had had intercourse with me before, all these other times, I knew how hard it was to refuse him because he would never give up on the subject, so I knew it would be easier to let him do it than to fight him off.

Q. Well, what happened?

A. Well, he took me in there and, I was laying down on the bed, and he put his head between my legs again and started moving his tongue around and using the suction, and then afterwards I would

(Testimony of Loretta Lindsey.)

have to—he would have to—I would have to take his penis in my mouth and get it all wet so he could stick that rubber thing on it, and then he would get on top of me and have intercourse with me.

Q. Did he—was he successful in having intercourse with you that time? A. Yes.

Q. Did you feel him inside you? A. Yes.

Q. Did you know he was inside you?

A. Yes.

Q. When was the next date that you can remember?

A. Well, the next date I can remember is when she went to [22] the hospital to have her next baby. That was February 27th of this year.

Q. Now, in between the time you just told about and the time now that you are going to tell about, was there—did he have intercourse with you during those periods, those dates, October 23, 1952, and February 27, 1954?

A. Yes. But I can't remember because whenever he would come home, just about, he would do those things to me.

Q. I am not asking you if you remember the specific dates. I am just asking you if he had intercourse with you or if he did any of these things, like having you put his penis in your mouth or put his tongue on your private parts, between those two dates? A. Yes, he did.

Q. That was a regular routine?

Mr. Ziegler: Now, I object to that question, if the Court please.

(Testimony of Loretta Lindsey.)

Mr. Munson: Your Honor, I believe that in a case——

Mr. Ziegler: I know, but the statement that it was a regular routine, I think the witness should testify rather than counsel.

The Court: Well, you might ask her how regular or how frequent it was.

Q. (By Mr. Munson): How often did this occur? A. When he was home. [23]

Q. I mean, you have already said that it occurred whenever he got an opportunity or when he was home, but I want to know approximately—was it once every two weeks, or once a week, or twice a week—I want to know what the frequency of it was?

A. Sometimes, if he was home over a period of a week or two weeks, it would be two or three times, but it might not be what he did to me on those specific dates I gave.

Q. You mean, he might not perform all three?

A. Yes.

Q. I realize that, but I just wondered how often the frequency of the contact was with you?

A. Oh, about, if he was home for that length of time, it could be two or three times.

Q. Two or three times a week, you mean?

A. Yes; or else sometimes it could be two times in one day.

Q. Tell us about this 27th of February incident of this year.

A. Well, she went to the hospital and had a

(Testimony of Loretta Lindsey.)

baby, and that night I was doing my book report and I went—he was in bed, and I went in there because I knew he read the book, so I went in and I asked him if he would tell me about the story in it because the next day——

Q. What was the name of the story?

A. "Seventeen."

Q. Who was the author? [24]

A. Booth Tarkington, I think; yes, Booth Tarkington.

Q. You were writing a book report, you say?

A. Yes.

Q. Was Bob home that night?

A. No, he wasn't. I can't remember whether Mr. Lindsey sent him out for something or sent him to the show or what, but Bob wasn't home.

Q. He wasn't there that evening. Well, what happened? You went in to ask Mr. Lindsey what the book was about?

A. Yes; because had read the story. And so I went in there and I was sitting on the vanity stool, and he was way over in the bed, on the other side of the bed, and so I went in and asked him, and he started telling me about it and he got up out of the bed and he went to the front room and pulled down the blinds and locked the front door and came to the back door and locked that and then he came back in the bedroom. By then I knew what was going to happen when he locked the doors and pulled down the shades and so I asked him to tell

(Testimony of Loretta Lindsey.)

me the rest of the story, and so he kneeled down in front of me and put his fingers——

Q. How was he dressed?

A. He had on his bathrobe. And he put his fingers up my leg and put them inside my private part and started moving it around and then he said, "Do you want it?" And then I [25] wanted to say, "No," but, I don't know, he just had a way about him of getting what he wanted when he wanted it, and so I didn't put up any fight or argument about it, so he did the same thing to me like he did before when he put his head between my legs and started moving his tongue around, and then he put his penis in my mouth and put that rubber thing on it and then he laid there for a while, moving up and down, and then after a while he would get off and go in the bathroom.

Q. Was he successful in having intercourse with you? A. Yes.

Q. Could you feel him inside of you?

A. Yes.

Q. Tell me, Loretta, were you ever placed on restriction, told you couldn't go out, or something like that? A. Yes.

Q. By Mr. Lindsey? A. Yes.

Q. Was the restriction ever lifted for any reason? A. Yes, it was.

Q. What was the reason?

A. Well, either I would behave myself for a while or else sometimes, when I never even thought

(Testimony of Loretta Lindsey.)

of it, after he had intercourse with me or something like that, he would let the restrictions go.

Mr. Ziegler: What was the answer? I never heard it, please. What did she say?

Court Reporter: A. "Well, either I would behave myself for a while or else sometimes, when I never even thought of it, after he had intercourse with me or something like that, he would let the restrictions go."

Q. (By Mr. Munson): You remember telling me all of this six months ago, do you, Loretta?

A. Yes.

Q. What induced you to report Mr. Lindsey to the authorities?

A. Well, I had been letting him do those things to me, I guess you would say, as often as he wanted to, and he would get mad and sometimes he would hit me, and then I knew I just couldn't do it any longer and I knew it was wrong.

Mr. Ziegler: Could I hear that answer read, please? I couldn't hear it from here.

Court Reporter: A. "Well, I had been letting him do those things to me, I guess you would say, as often as he wanted to, and he would get mad and sometimes he would hit me, and then I knew I just couldn't do it any longer and I knew it was wrong."

Q. (By Mr. Munson): When was the last time; do you remember when the last time was that he had intercourse with you?

A. I don't know the exact date but I know it was around the [27] last part of March.

(Testimony of Loretta Lindsey.)

Q. Around the end of March? A. Yes.

Q. Around March 30th?

A. Around the end of March.

Q. Did you tell anybody about it?

A. Well, not at the time, but a few days later I told my girl friend what I was going to do and what Rollie had done to me. I told her I was going to go to the authorities, and the people I was working for, the Riewolds, I told them about it.

Q. You are referring to Don Riewold and his wife? A. Yes.

Q. Who did you tell; which one of the two did you tell?

A. Well, I told Don, but he told me—when I went over there I made up a story that I was just going to run away and not say anything and not even bring this up at all.

Q. Had you run away from home before?

A. Yes.

Q. For what reason?

A. Well, because I didn't like it there.

Q. Do you have any hostility toward Victoria, your aunt? A. No.

Q. How do you feel toward her, or how did you feel toward her? [28] A. (Crying.)

Q. Have a drink of water, Loretta.

The Court: Recess for five minutes.

Whereupon Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; the witness Loretta Lindsey resumed the witness

(Testimony of Loretta Lindsey.)

stand, and the direct examination by Mr. Munson was continued as follows:

Q. When we left off, you just said that on March 30th was the last time that you recall that Mr. Lindsey had sexual intercourse with you and that after that, a couple days after that, you went over to the Riewolds' house and told them about it. Did you do anything else while you were there?

A. Yes. I phoned my mother.

Q. Do you remember what day that was; what day of the week, I mean, that that was?

A. I am pretty sure it was a Saturday.

Q. Could it have been Saturday, April 3rd?

A. It could have been but——

Q. Well, did—after that time did Rollie make any other advance at you? Were there any other advances made?

A. Yes, he did, but he wasn't successful.

Q. Well, when was that?

A. Well, it was—— [29]

Q. As nearly as you can remember?

A. It was the next week, around the next week. And he tried——

Q. You mean the next Saturday, or sometime during the week?

A. It was within a week.

Q. And what did you do?

A. Well, I was sitting on the couch, and my Mom went out, and I thought he was asleep, so I just sat there reading some funny books because

(Testimony of Loretta Lindsey.)

I was supposed to go over to Don and Ann's, over to the Riewolds', to get paid for the work I had done, and so I was waiting for the time to come that I had to go over there, and just about five minutes after she walked out of the door he turned over and he got up and went into the kitchen and had a glass of water or went in there for something and he came back and he sat down, kneeled down, in front of me and asked me if I wanted it, and I told him, "No," and he tried to put his hand up my skirt, and I wouldn't let him and I started crying, and I tried that before, and he always got mad at me and he hit me, and so I went into the—after that he didn't try anything, so I went into the bathroom and washed up and I told him I had to go over to Don and Ann's and get paid, and he said, "O.K., but be right back," and so I went over there and I told them and I phoned my Mom up and told her what he tried.

Q. You told "them" or "him"? I didn't quite hear you. [30]

A. I told him.

Q. "Him", meaning Don Riewold?

A. Don Riewold. And I called up my Mom down in Seattle and I told her what he tried, and she was pretty mad about it, and then Rollie called up after a long period of time, and he said, "Is Loretta there?" And Ann told him, "Yes; but I haven't paid her yet because I have to get my check cashed." And so, when I got home, he said, "What are you trying to prove? I know it couldn't have taken that long to get paid."

(Testimony of Loretta Lindsey.)

Mr. Ziegler: I didn't get that answer. "What are you trying to prove" and what?

The Court: "I know it didn't take that long to get paid."

Q. (By Mr. Munson): Did you tell anybody else?

A. Yes. After I told Don and Ann, I told my brother Bob about it.

Q. Anybody else?

A. I told a lot of people.

Q. Who did you tell? You told about what had been going on with you and Rollie?

A. Yes.

Q. Do you remember?

A. I told my aunt.

Q. You mean, Florence Dalton? [31]

A. Yes. And my uncle, her husband, and my other uncle and my grandmother and my real father and my Uncle Patty and my brother Gary was down there, and so he heard it, and I told Arleen Field and I told Mr. Davidson, and——

Q. Mr. Davidson, the attorney, or the minister?

A. Attorney. And so then I told Fred Bryant and Reverend Grissett and I told you.

Q. And that is when this case began?

A. Yes.

Q. Well, after you had been up talking to me and other officials, where did you go?

A. Well, I——

Q. I mean, had you left the Lindseys' home at that time? A. Yes.

(Testimony of Loretta Lindsey.)

Q. And where were you staying?

A. At my grandmother's house.

Q. That is where you stayed after you left the Lindseys' house?

A. Yes.

Q. And after you were up in my office, were you placed in another house?

A. Yes.

Q. Where was that?

A. Out the road. They call it the Happy Kids Home, I guess.

Q. And then did you stay there all the time?

A. No. Right after I went before something here, I went to Wrangell to live with Mr. and Mrs. Krepps.

Q. Now, how long were you over in Wrangell?

A. Just about four months or so.

Q. Did you like it there?

A. No.

Q. Did you want to get back to Ketchikan?

A. Yes.

Q. Well, was there any particular reason for wanting to come back to Ketchikan?

A. After I had been there for a while I didn't like it, and as time went on I missed the kids and my Mom.

Q. You missed what kids?

A. The Lindseys.

Q. Do they have three children?

A. Yes.

Q. The younger ones. Did you spend a lot of your time taking care of those children?

A. Yes, I did.

Q. How do you feel towards the children?

A. I like them a lot.

(Testimony of Loretta Lindsey.)

Q. Did you ever do anything to hurt them?

A. No.

Q. You say you missed your young nieces and nephews or brothers and sisters by adoption. What did you do? Did [33] you make an attempt to get back here?

A. Yes, I did.

Q. Did you write Mr. Lindsey?

A. Yes, I did.

Q. And what did you tell him?

A. I told him that I was coming back here to drop all the charges that I made because they weren't true, and I got here before the letter did.

Q. How did you get back here?

A. Well, the only thing I could think of was, I accused Mr. Krepps of having had intercourse with me when he hadn't, but that was the only thing I could think of to come back.

Mr. Ziegler: Pardon me. I didn't get that.

The Court: "That was the only thing I could think of to get back."

Mr. Ziegler: Did she say what she did think of?

The Court: She hasn't said that yet.

Mr. Munson: She said that she accused Jack Krepps of having intercourse.

The Court: Well, she said that before.

Mr. Ziegler: I didn't hear that. That is the part I was asking about.

The Court: Oh.

Q. (By Mr. Munson): You said that wasn't true?

A. Yes. [34]

Q. Why did you say a thing like that?

(Testimony of Loretta Lindsey.)

A. Well, because that was the only way I could think of I could get back here to my Mom and the kids.

Q. Well, did you tell them that it wasn't true?

A. My Mom and Dad?

Q. I mean, Jack and Mrs. Krepps.

A. Yes, I did.

Q. What was your accusation; what did you say, and who did you say it to?

A. I told it to Judy.

Q. And what did you say?

Mr. Ziegler: Told it to whom?

A. Mrs. Krepps. And I told her that—well, I made up a big story—that I wouldn't be surprised if I was pregnant, and she said, "Why?" And I said, "Oh, I don't know. I just have a feeling." And she said, "Do I know who did it?" And I said, "Yes." And she said, "How well do I knew that person?" And I said, "Pretty well." And she went into the house and called up Jack and had him come home.

Mr. Ziegler: Jack Krepps, do you mean?

A. Yes.

Mr. Ziegler: Pardon me for interrupting.

Q. (By Mr. Munson): Now, this was an attempt, you say, on your part to get shipped back to Ketchikan; is that the [35] idea?

A. Yes.

Q. What in fact did happen?

A. I did get shipped back to Ketchikan, as you

(Testimony of Loretta Lindsey.)

call it, and as soon as I got back I went up to see my Mom and Dad and the kids.

Q. And when you came back here, what did you tell Mr. Lindsey?

A. Well, when I came back, he wouldn't let me in the house, and I asked him if they had got my letter, and he said, "No," and so I told him I had written saying I was dropping all the charges, and just as soon as I said that he opened the door, and a great big smile on his face, and he asked me why I had done such a thing, and I told him that I didn't know, and then he called up the attorneys, and he started eating breakfast after he called them up, and I was playing——

Q. Who was there at that time?

A. My mother and the three kids. The kids were still in bed, and so I went in there and got them and——

Q. Where did you go?

A. I started playing with them.

Q. No; I don't mean the kids. I mean, where did you go with Mr. Lindsey?

A. Down to Mr. Ziegler's office. [36]

Q. Now, when you got down to Mr. Ziegler's office, who was there?

A. Young Ziegler, and my father, and his secretary, and me.

Q. Anybody else?

A. Not that I can remember.

Q. Was Mr. Lindsey there?

A. Yes, he was.

(Testimony of Loretta Lindsey.)

Q. You didn't mention his name?

A. Yes, I did.

The Court: She referred to him as "father".

Q. (By Mr. Munson): How many people were talking?

A. Well, all of us; I mean except for the stenographer, or whatever you call her.

Q. Did young Mr. Ziegler ask you a question?

A. Yes.

Q. And then would someone else besides you have a few words to make before you made your answer?

A. Yes.

Q. Who was that other person?

A. My Dad.

Q. And what would he do?

A. Well, he would say something, and then I would answer the question.

Q. You mean, you would answer it substantially the way he suggested in his statement? [37]

Mr. Ziegler: Now, that is leading, if the Court please.

Mr. Munson: I am trying to sum up what she just said.

The Court: Well, you may ask her if anybody suggested the answers that she should give.

Q. (By Mr. Munson): Did anyone suggest the answers that you should give?

A. Some of them; yes.

Q. Now, on your way down to the attorney's office, who did you go with down to the attorney's office?

A. Just my father.

(Testimony of Loretta Lindsey.)

Q. Did he have anything to say along the way?

A. Yes, he did. He asked me why I told all that and he said, "I thought you liked it," and I just didn't know what to say.

Mr. Ziegler: What was the answer, if the Court please? I hate to interrupt, but I can't hear too good over here.

The Court: Maybe the table ought to be moved.

Mr. Ziegler: Will the reporter kindly read the answer?

The Court: That is the last answer?

Mr. Ziegler: Yes, your Honor.

Court Reporter: Do you want the question?

Mr. Ziegler: Yes. [38]

Court Reporter: Q. "Did he have anything to say along the way?" A. "Yes, he did. He asked me why I told all that and he said, "I thought you liked it," and I just didn't know what to say."

Q. (By Mr. Munson): You said that kind of fast, Loretta. He said to you—is this just what you said now? He said to you, "Why did you tell all that? I thought you liked it." A. Yes.

Q. And you just didn't answer him?

A. No.

Q. You said nothing?

A. I didn't know what to think.

Q. Well, Mr. Lindsay knew that you had been examined by a doctor, didn't he?

A. Yes, he did.

Q. Did he have any suggestions to make as to how to explain that?

(Testimony of Loretta Lindsey.)

A. Well, a few days later, when I went up to the house to see the kids, he—I asked him what should I do at this thing if they asked me because I told him the doctor's examination shows that I have had intercourse with somebody, and he said, "Well, just tell them that you stuck a banana or something up you."

Q. You say Victoria was there?

A. And my grandmother. [39]

Q. And Mrs. R. D. Pawsey? A. Yes.

Q. You said you told various members of your family about six months ago, in April, about these things. What was the reaction? What did they say?

A. Well, my aunt Flo, Mrs. Dalton, was, I guess you would put it, sick when I told her this. She felt sick and she looked it, and my uncle, Lawrence Pawsey, just told me not to say anything about it. He said, "That is an awful strong thing to say about anybody unless you have proof."

Q. Well, what was Victoria's reaction?

A. She didn't—she just asked me why I didn't tell her before.

Q. How about your grandmother?

A. Well, as soon as I told my grandmother, she took me home and told me to get my clothes, and before I got my clothes she made me tell my Mom what I just said, and then we left.

Q. You mean, your grandmother took you right out of the house? A. Yes.

Q. And you were living with—and that is the grandmother, Mrs. R. D. Pawsey, that you were

(Testimony of Loretta Lindsey.)

living with when you came down to my office?

A. Yes.

Q. What did the other members of the family say?

A. I told my real dad about it and I asked him if he believed [40] me, and he said, yes, he did.

Mr. Ziegler: If the Court please, I move that that be stricken, her real dad, what her real dad said, because I understand he is dead at the present time.

Mr. Munson: He is.

Mr. Ziegler: And, furthermore, it would be incompetent evidence anyway, as to what the father said.

The Court: Yes. It will be stricken.

Mr. Ziegler: And the jury asked to disregard it.

The Court: And the jury is instructed to disregard it. That much of it, as to what her real father said in response to what she said, is stricken. The fact that she reported to him is not stricken.

Q. (By Mr. Munson): Now, a little earlier, Loretta, when you were telling me about your younger girlhood days when Mr. Lindsey was having these sexual relations with you by means of your mouth, you said that you got rid of the stuff by going to the bathroom but that later on you did something else. What was that something else?

A. Well, we had this cotton that you use to stuff chairs or something, and I would spit it out in that and put it in some boxes that was in the closet, behind the boxes.

(Testimony of Loretta Lindsey.)

Q. Did you ever show that?

A. Yes, I did. I showed it to my mother and grandmother, and I kept it just—— [41]

Q. Did you show it to anyone else?

A. My brother Bob saw it; yes.

Q. You showed it to Bob? A. Yes.

Q. Did you ever look for it after this——

A. Well, when I came home——

Q. Came home from where?

A. Wrangell. I went upstairs and just got inside my door and I saw that everything had been just stripped, meaning that everything was moved, and gone through everything.

Q. Was that cotton gone?

A. Yes, it was.

Q. Your room was stripped, did you say?

A. Well, searched thoroughly.

The Court: Did you mean that later on you did something else, something different?

A. Yes, I did.

The Court: What was it? What was it that you did that was different?

A. Well, before I put that stuff in the sink or in the toilet, but then I was upstairs or something and I had to put it on that cotton.

Q. (By Mr. Munsey): Well, Loretta, where is your bedroom in relation to the bathroom in the Lindsey house?

A. My bedroom is upstairs, and the bathroom, you have to go [42] down the hall and down the stairs, and into the hall upstairs, and then into the

(Testimony of Loretta Lindsey.)

kitchen and just from the kitchen to the bathroom.

Q. In other words, it is all the way downstairs in another part of the house? A. Yes.

Q. Well, Loretta, just for clarification now, when you came back from Wrangell you testified that you wanted to drop everything? A. Yes.

Q. And you said that it was because of your feeling towards the children of the Lindseys and Victoria? A. Yes.

Q. What I would like to know is what changed your mind?

A. Well, because my Dad, Mr. Lindsey, told me he didn't know if he could control himself after I got back, and I remember one time I went up there——

Q. Went up where, Loretta?

A. To the Lindseys' house. And my Mom and Gram weren't home, and just Janice and Pat were there, my brother and sister.

Q. Well, did you know that they were gone when you went up there?

A. Well, I met them, but she said that Janice was there, and so I went up there, and I was sitting on the couch, and he was sitting on the chair, and I was talking, and Janice [43] fell asleep, and so I put her to bed.

Q. Loretta, at this point were you and the Lindseys convinced that the case was over with?

A. Yes. And so I put Janice to bed, and I came back and I sat on the chair next to the door, and he was sitting on the armchair and he asked me

(Testimony of Loretta Lindsey.)

if I wanted it, and then I knew I had to get out of that house before he tried anything like that again, and so just then my grandmother came home and said he was wanted to carry up some groceries or something.

Q. Well, after you came back here to Ketchikan, did I or anybody in the office ever make any attempt to contact you about this?

A. No. I came up here of my own free will.

Q. And what was the reason for your coming up to see me after this return to Ketchikan from Wrangell?

A. Well, because I had made that story to the attorneys, and which wasn't true.

Q. You mean the statement? A. Yes.

Q. That you made to the Zieglers?

A. Yes. It wasn't true, and I knew that if Rollie did try anything with me again, and I told the attorneys it wasn't true, and that I would be in a lot of trouble, and that, if I ever told them anything else again, they wouldn't [44] believe me.

Q. Did I ever make any statements about lying under oath or threats against you? A. No.

Q. What did I tell you?

A. You told me to tell the truth.

Q. What did I tell you the first time I saw you?

A. To be sure I was telling the truth.

Q. What have I always told you every time we have talked about this case?

Mr. Ziegler: Now, if the Court please——

A. To tell the whole truth.

(Testimony of Loretta Lindsey.)

Mr. Ziegler: Just pardon me a minute, if the Court please. The District Attorney is not on trial here, and there is no accusation or charge being made that Mr. Munson has done anything at all in this case that wasn't proper. I don't think the questions are proper.

The Court: Well, the questions are hardly proper without there being some implication that she is not telling the truth. I think on redirect examination, if there are any such insinuations or implications, why, it would be proper to go into what you told her.

Mr. Munson: No further direct examination.

The Court: What about the seventh count? Isn't she a witness to that? [45]

Mr. Munson: I thought I covered that, your Honor.

The Court: I don't remember it. If you did, if you have, why, never mind.

Mr. Munson: Your Honor, the testimony that was sought to be elicited from this witness regarding the bringing of this witness up to the office of Bob and Mr. Ziegler, Sr., and the statement about how she would explain the fact that she was not a virgin.

The Court: You rely on that?

Mr. Munson: That and the fact that she has testified that he was suggesting some of the answers that appear in this affidavit.

Mr. Ziegler: Pardon me. With the plane going, I couldn't hear you, Mr. Munson.

(Testimony of Loretta Lindsey.)

Mr. Munson: And the fact that Mr. Lindsey was suggesting answers for her to give in this affidavit which she has later characterized as being untrue, all going to show influence.

Mr. Ziegler: I understand then, Mr. Munson, that you rely on supporting the seventh count in the indictment on the statements just made?

Mr. Munson: Yes.

Mr. Ziegler: And do you have any further testimony, may I inquire, on that point from other witnesses?

Mr. Munson: No other direct witnesses. [46]

Mr. Ziegler: If the Court please, I would like to make a motion at this time and ask that the jury be excused.

The Court: Well, if it is that motion you wish to make, why, I am going to deny it, so we won't have to excuse the jury.

Mr. Ziegler: Well, the Court hasn't heard my motion.

The Court: Well, I say, if it is that motion that you are going to make, why, the Court will deny it, so we won't have to excuse the jury.

Mr. Ziegler: Well, the Court hasn't heard the basis of my motion.

The Court: Well, is it going to be insufficiency of evidence?

Mr. Ziegler: No, your Honor. The motion is simply this, your Honor, that the defendant is accused of endeavoring to influence a witness who was

(Testimony of Loretta Lindsey.)

then duly subpoenaed before the grand jury, and there is no evidence whatsoever produced.

The Court: Well, it is the sufficiency of the evidence then.

Mr. Ziegler: Well, of course if there is no evidence produced that she wasn't under subpoena at this time that the seventh count was made——

The Court: Well, I don't remember what the evidence is on that.

Mr. Ziegler: There is no evidence, your Honor, no [47] evidence that I recall. The record of course and the file will show.

Mr. Munson: Your Honor, I request permission to reopen the direct to ask the witness whether she was then under——

Mr. Ziegler: I don't think you need to do that. The Court's file will show the date she was subpoenaed to appear before the grand jury.

The Court: Is that an element of the offense?

Mr. Ziegler: Yes, it is, your Honor.

The Court: But is it an element of the offense under the law, not the indictment?

Mr. Ziegler: Yes, I think so; the statute so provides—any witness under subpoena.

Mr. Munson: Well, with due respect to defense counsel, it is not an element under the law.

The Court: Well, then we don't want to bother with it. If it isn't an element under the law, it need not be proven here.

Mr. Ziegler: If the Court please, it is my under-

(Testimony of Loretta Lindsey.)

standing of the law, your Honor. If I am mistaken, then I am mistaken.

Mr. Munson: That allegation is usually made to show the fact.

The Court: You can't add an element by putting it [48] in the indictment. That is plain enough. Well, the motion is denied. It is not an element under the law. Proceed.

Mr. Munson: Your Honor, in any event, she was subpoenaed on the 26th day of April, 1954.

Mr. Ziegler: Before the grand jury?

The Court: Well, what is the use of discussing this? I have ruled it is not an element under the law. It is just superfluous. There is no use of taking the time up of the Court. Let's go on now with this case.

Cross Examination

Q. (By Mr. Ziegler): Loretta, Mr. Munson asked you, when you came back from Wrangell and after you had made this statement you testified to, if he said anything to you about what kind of testimony you should give, and you said no; that is correct? A. Yes.

Q. I will ask you did Miss Seliotes of the Welfare Department talk to you about it?

A. About that?

Q. Yes; about this statement.

A. No. She didn't know anything about it until I told her.

Q. And, when you told her, did you tell her what the statement was? [49]

(Testimony of Loretta Lindsey.)

A. No. I just told her that whatever I said before wasn't the truth.

Q. I see. And then what did she say to you?

A. She asked me why I did that.

Q. And is that all?

A. Yes; and she said she thought I made a mistake by doing it.

Q. I see. Did she tell you, "Which would you rather do, see your father go to jail or you be charged with perjury?"

A. No.

Q. She didn't tell you that?

A. No.

Q. Loretta, didn't you tell Mr. and Mrs. Lindsey that Miss Seliotes told you that? Now, think.

A. No, she didn't.

Q. Mrs. Pawsey—didn't you tell Mrs. Pawsey and Mrs. Lindsey that Miss Seliotes said to you, "Now, Loretta, would you rather see your father go to jail, or would you rather be charged with perjury?"

A. No, she didn't; but I thought that.

Q. You made that up, did you?

A. I thought it. I didn't tell anybody about it.

Q. Oh. Now, what did you think?

A. I thought, well, would it be worth having my father go [50] to prison or me being charged with perjury. At the time I thought perjury would be all right.

Q. I see. And you did tell Mrs. Pawsey and Mrs. Lindsey then that Miss Seliotes told you that?

A. No.

(Testimony of Loretta Lindsey.)

Q. You didn't tell them that? A. No.

Q. Are you sure of that? A. Yep.

Q. Did you say "Yes" or "Yep" or what?

A. Yes.

Q. Now, Loretta, I think you testified in answer to Mr. Munson's question about your feeling for Mrs. Lindsey—you call her Mom? A. Yes.

Q. And what did you say about that? What was your feeling towards her?

A. I like her very much.

Q. And you always did?

A. And I still do.

Q. And you still do. Is this your writing, Loretta? A. Yes.

Q. And do you know when you wrote it? Can you tell from it when you wrote it?

A. It looks like April. [51]

Q. Do you know what year it is?

A. No, I couldn't.

Q. Was that about the time that this charge was filed against Mr. Lindsey? A. No.

Q. It wasn't. When did you—do you remember the time of the month when you first went to the Riewolds' and other people and told them what you said here? Was it in April? Was it late April or the middle of April?

A. The first part of April.

Q. What was it?

A. I think around the first part of April.

The Court: I think you better stand back. You

(Testimony of Loretta Lindsey.)

are holding this thing in a conversational tone that no juror could hear back there.

Mr. Ziegler: All right, your Honor.

Q. (By Mr. Ziegler): This has no year on this date. It is dated April 27th, apparently 6:00 o'clock; is that correct?

A. I don't even know if I put that on.

Q. All right. Well, now, what did you say in that card? Read it.

Mr. Munson: I would like to see that if I could.

Mr. Ziegler: Yes. I was going to introduce it in evidence. (Handing document to Mr. Munson.) She has stated [52] that this is her writing, your Honor, and I will ask to have it introduced in evidence.

The Court: Well, if there is no objection, it may be admitted.

Mr. Munson: I object on the ground, your Honor, that it doesn't mean anything.

The Court: Let's see it.

(Mr. Munson handed the document to the Court.)

Mr. Ziegler: I am going to have her read it and have her explain the language.

Mr. Munson: Well, I don't know under what possible hearsay exception that could come in under, and I object to it as hearsay.

Mr. Ziegler: This is cross examination on the question of her feelings toward her mother.

The Court: I don't see what—I can't even make out the last two words.

(Testimony of Loretta Lindsey.)

Mr. Ziegler: Maybe the witness can, your Honor. It is her writing.

The Court: Well, the last two words would have to make it relevant or else it is certainly meaningless.

Mr. Ziegler: That is the purpose of it; that is the reason I——

Mr. Munson: Your Honor, I object on another ground, that he is trying to introduce into evidence something on [53] cross examination as substantive evidence, and I don't believe he can do that.

The Court: It is part of the cross examination introduced. The only question is whether it is intelligible. It isn't intelligible to me. Now, if you want to try to make it intelligible with the witness, why, you may do so.

Q. (By Mr. Ziegler): Loretta, will you read that and explain what you say there with reference to your mother? Take your time and see if you can tell the jury what you say there.

A. This wasn't written this year.

Q. How is that?

A. This wasn't written this year.

Q. Well, I understand that, and——

Mr. Munson: Well, your Honor, if that wasn't written this year, I object on the ground that it is pure hearsay and admissible under no possible exception to the hearsay rule.

The Court: Well, it all depends whether it was written since this charge was brought.

(Testimony of Loretta Lindsey.)

Mr. Munson: This charge was brought this year, your Honor.

The Court: Then I will have to sustain the objection.

Mr. Ziegler: If the Court please, the purpose of this writing, as I understand it—— [54]

Mr. Munson: I object to arguing after the Court rules, your Honor.

Mr. Ziegler: Well, if the Court will listen to my reasoning for it——

The Court: Well, you may state your purpose so long as stating the purpose will not be prejudicial.

Mr. Ziegler: The testimony is, as I understand her to say, that she loves her mother and always has. Now, the question is—it doesn't have anything to do with whether it is this year or not, if she made contradictory statements with respect to her feeling toward her mother.

The Court: But it is an immaterial matter. Her mother is not on trial here. So, it is an attempted impeachment on an immaterial matter.

Mr. Ziegler: If the Court rules in that manner——

The Court: Yes.

Mr. Ziegler: ——for the time being we will not pursue it any further. I think, however, your Honor, at least I think it will become pertinent later on.

The Court: Well, you may try to get it in later on if you think you can make it competent for some purpose.

(Testimony of Loretta Lindsey.)

Q. (By Mr. Ziegler): Now, Loretta, after the preliminary hearing was held here last May—I forget the date——

Mr. Ziegler: What date does the record show; do you recall (addressing Mr. Munson)? [55]

The Court: You don't have to have the exact date, if she remembers the occasion.

Mr. Ziegler: Well, if she knows, it was the preliminary hearing.

Q. (By Mr. Ziegler): Do you remember the time you testified in the court here last May before you went to Wrangell? A. Yes.

Q. After that hearing was held, you went to Wrangell, didn't you? A. Yes.

Q. And you were placed in the custody of Mr. Krepps, the Marshal there, by the Welfare Department? A. Him and his wife.

Q. How is that?

A. I said, in his and his wife's custody.

Q. Now, just before the hearing, you know, when they had the hearing downstairs, were you in the hospital here? A. Yes.

Q. And what did—what were you there for?

A. Well, they thought it was appendicitis, but it wasn't.

It was just nerves.

The Court: The jury is instructed to disregard that. It is wholly without any probative weight or relevancy.

Q. (By Mr. Ziegler): Now, when did you leave Wrangell to come back to Ketchikan, Loretta, or

(Testimony of Loretta Lindsey.)

just about? Do you [56] know the date you got back here?

A. It was just either the last week or the last couple of weeks in August.

Q. I see. And when did you, after you returned to Ketchikan, when did you go to the home of Mr. and Mrs. Lindsey?

A. The day after I got back.

Q. The day after you got back. And was that the same day that you went up to the law office of Robert Ziegler here? A. Yes.

Q. All right. Now, how long were you in the house there with Mr. and Mrs. Lindsey before you went to the office?

A. Oh, ten or fifteen minutes.

Q. I see. Then did you and Mr. Lindsey go up to the office together? A. Yes.

Q. And about what time in the morning was that, or what time of the day?

A. It was in the morning.

Q. It was in the morning. And can you tell the jury how long you were there making the statement? A. I really don't know.

Q. You don't have any idea? A. No.

Q. Well, now, on the way up, now, just tell me what Mr. Lindsey said again. [57]

A. Well, he told me he just couldn't see how I could have said that because he thought I liked it.

Q. He told you what? I didn't hear you.

Mr. Munson: Would the reporter read the answer back please?

(Testimony of Loretta Lindsey.)

Court Reporter: A. "Well, he told me he just couldn't see how I could have said that because he thought I liked it."

Q. (By Mr. Ziegler): Now, do you know what he was referring to when he said that?

A. Yes.

Q. Well, was it the charges that you made against him? A. Yes.

Q. Was that mentioned?

A. No. But he said "it," and I knew what he meant.

Q. Now, what else was said?

A. That was all about that.

Q. All right. Was there anything else said?

A. Well, before he said that, on our way down we ran into one of the kids I used to know, and he said, "Hi" to me, and I said, "Hi" to him, and Rollie said, "Well, we are going to get this thing straightened out."

Q. All right. Was there anything else said?

A. There could have been, but I don't remember.

Q. Now, then, after—as I understand it, you and he walked [58] from the home out on Woodland Avenue to the office downtown? A. Yes.

Q. And then, when you got there, you were asked certain questions, were you?

A. Yes, I was.

Q. Then after you had finished making your statement did you leave the office?

A. Yes, I did.

Q. And when did you come back?

(Testimony of Loretta Lindsey.)

A. To the office?

Q. Yes. A. That afternoon.

Q. Can you tell about what time?

A. No, I couldn't.

Q. Was it late afternoon; do you remember?

A. I don't remember.

Q. Do you remember what you did when you went back to the office?

A. I came back and signed that piece of paper.

Q. Did you read it over? A. Yes.

Q. And then you left? A. Yes.

Q. Now, that was on August 25th, according to the date. Now, [59] from August 25th you were staying at the McMasters', were you?

A. Yes, I was.

Q. And were you around Mr. and—around your home, that is, Mr. and Mrs. Lindsey's house after you signed this statement? A. Yes, I was.

Q. Just tell the jury how often you were around there.

Mr. Munson: I object to all this unnecessary detail, your Honor. I don't see where it is material to the issues in this case. It is just wearing the witness out on a lot of trivial detail.

The Court: Well, it may be preliminary to something. It certainly would not be material to show how frequently she was around the house unless it led up to something that was material.

Mr. Ziegler: Well, I can't ask all the questions at one time that I have in mind, your Honor. Maybe I can shorten it up this way.

(Testimony of Loretta Lindsey.)

Q. (By Mr. Ziegler): After you signed this statement, Loretta, on the 25th of August, did Mr. Lindsey do anything further?

A. What do you mean by that?

Q. In connection with this statement you made saying all this wasn't true. [60]

A. Well, not exactly to that statement or whatever you call it, but he told me not to say anything, "Don't sign any papers when you go back to see the D.A.'s if you want to come home."

Q. Anything else?

A. Yes. I asked him about my examination by the doctor and what to do about it, what to say, what happened.

Q. Anything else?

A. Yes. He said to say you stuck a banana or something up you.

Q. Anything else?

A. He always talked about this, but I don't remember what he said.

Q. I see. Well, now, over how long a period of time was this, Loretta? This was the 25th of August you made the statement. Was it a week, two weeks, three weeks, four weeks?

Mr. Munson: I object on the ground of immateriality, your Honor. I can't see the purpose of this.

The Court: I think I missed that last question. Will you read the question to which objection has been made?

Court Reporter: Q. "Well, now, over how long

(Testimony of Loretta Lindsey.)

a period of time was this, Loretta? This was the 25th of August you made the statement. Was it a week, two weeks, three weeks, four weeks?" [61]

The Court: Well, it isn't clear to me—over how long a period was what?

Mr. Ziegler: That she was around the house with Mr. and Mrs. Lindsey. I want to find out if there was anything transpired in connection with this statement after she was around the house, after she made it.

The Court: Well, why don't you just ask her if anything happened with reference to that statement afterward?

Mr. Munson: He already has, your Honor.

Mr. Ziegler: And you objected to it as immaterial.

Mr. Munson: I objected to the details.

The Court: I don't think there was any question of that kind asked. I don't recall it.

Mr. Ziegler: No; there wasn't any question. I asked her—instead of asking her what happened, I asked her what was said and what was done, which is the same thing, as I understand it.

The Court: Well, I thought you were trying to fix some time or frequency or something of that sort.

Q. (By Mr. Ziegler): This is your signature, isn't it, Loretta? A. Yes.

Q. And that is—is this the paper you refer to as a statement that was signed before Robert Ziegler on August 25th?

(Testimony of Loretta Lindsey.)

A. I don't know the date, but I know I signed it.

Q. You signed it before him? A. Yes.

Mr. Ziegler: Do you have a copy of this (handing a document to Mr. Munson)?

Mr. Munson: I don't know. Your Honor, I do have an objection to this affidavit. I object to the fact that the complaining witness' own testimony indicated that the conversation that took place there was at least tripartite, with Bob asking Loretta questions and Mr. Lindsey, who was there, suggesting some of the answers, and this affidavit here would indicate a simple colloquy between the questioner, who was Bob Ziegler, and Loretta, and I think that that affidavit for that reason is certainly not representative of what took place at that interview.

The Court: Well, I think the objection will have to be sustained. You may offer it with your own witnesses.

Mr. Ziegler: I wanted to cross examine her on it, if the Court please.

The Court: You may cross examine her. I am just ruling against its admissibility at the present time.

Mr. Ziegler: I can't very well cross examine her without reading it. That was the purpose of offering it in evidence, its admittance. Of course, I realize the Court has ruled, and I don't want to, after the Court has ruled, argue again as to its admissibility, but—— [63]

The Court: Well, you don't have to, in order to

(Testimony of Loretta Lindsey.)

question her; I don't think you have to read from it.

Mr. Ziegler: Well, I want to question her on cross examination as to the actual statements that she makes, that she made in this statement, your Honor. She has testified on direct examination.

The Court: Yes; but she has testified in the manner that the District Attorney indicated, which makes it inadmissible, and, so, that, if you want to question her about anything she said there, you will have to use as a basis for the questions something else than that document.

Mr. Ziegler: Does the Court, so I may understand the Court's ruling, does the Court rule that I can't read from this statement that I have here that she made?

The Court: No; otherwise it would be just circumventing the ruling of the Court holding it to be inadmissible under her testimony. She is the one who testified to the manner in which these answers were elicited and that makes it inadmissible, so you are remitted to your own witnesses in order to renew the offer to introduce it into evidence.

Mr. Ziegler: Well, your Honor, the situation is this. I can't cross examine her with respect to the contents of the statement in view of the Court's ruling, and I either am going to have to recall her or ask that the statement be properly identified at this present time out of order so I can [64] question her.

The Court: Well, of course, I don't see why you need that statement to cross examine her. The oc-

(Testimony of Loretta Lindsey.)

currence, such as it was there, is one that is susceptible of inquiry without looking at any paper.

Mr. Ziegler: Well, if the Court please, as I understand the procedure, if this statement is not admitted now, I can't cross-examine her about the contents; if she is away from the stand, I will not have the opportunity to ask her in connection with this and the truth of it.

The Court: If you want to stick to that statement on your cross examination instead of what occurred there, why, that is up to you, but I can't permit you to conduct a cross examination from something that I have ruled out of evidence.

Mr. Ziegler: I would ask permission of the Court to call the witness out of turn and have him state——

The Court: Well, when the time comes that you think it is proper to make such a motion, you may do so, but we needn't commit ourselves to anything of that kind now.

Mr. Ziegler: The only difficulty I find myself confronted with from the Court's ruling is that, after the witness is through, I can't cross examine her in connection with actual statements she made in the affidavit. She is off the stand.

The Court: Well, that is the same difficulty that [65] everybody is in who is up against an adverse ruling about the admissibility of documents. I don't know how the Court is going to avoid that. It seems to me that, what would ordinarily happen in a situation of this kind, you would call your own wit-

(Testimony of Loretta Lindsey.)

nesses on your own case, and then, if the District Attorney wasn't satisfied with what your witnesses testified, he would call this witness on rebuttal, and then the thing would be thoroughly explored, but at present——

Mr. Ziegler: As long as I would have the right to recall her after this is admitted in evidence——

The Court: I wouldn't say that you would have the right to recall her, but, as I say, that is something that need not be decided at this moment.

Mr. Ziegler: Well, your Honor, it puts me into a sort of a legal situation here where it is pretty difficult to——

The Court: Well, as I say, that is the same kind of dilemma any counsel is in when he is faced with an adverse ruling. There is nothing unusual about it in that respect.

Mr. Ziegler: She has identified the statement as her signature.

The Court: Yes; I guess she has.

Mr. Ziegler: My understanding, of course, is that anything that is signed, a statement a person signs, an adverse witness, would be admissible evidence.

The Court: Well, it would be admissible evidence if there wasn't already evidence in the case repudiating it in part. If it were not for that partial repudiation, why, that would be true.

Mr. Ziegler: Well, as I understand it then, your Honor, in a case of this kind all a witness needs to do is to say, "Well, the statement isn't true," and, therefore, it can't be introduced in evidence.

(Testimony of Loretta Lindsey.)

The Court: Well, certainly not, not on her testimony. You have to call your own witnesses. I have already stated that.

Mr. Ziegler: I don't like to be contentious with the Court, but I would like to have the opportunity, and I feel that that is right, to cross examine the witness.

The Court: I have already told you that I am not going to make that decision in advance. I will make it when the time comes, when you renew it.

Q. (By Mr. Ziegler): Now, Loretta, you have testified to the actions of Mr. Lindsey from the time you were, I think, around seven years old?

A. Yes.

Q. And, now, as I recall it, the first time you stated an act of intercourse took place was when you were nine or ten years old; is that correct?

A. Yes. [67]

Q. Where did that take place?

A. On the boat.

Q. On the boat? A. Yes.

Q. And do you remember the day or year or month or night; do you remember that? What you are trying to say is there was such an occurrence or happening sometime on the boat? A. Yes.

Q. And do you know how old you were then?

A. I said around nine.

Q. Around nine? A. Yes.

Q. All right. Now, after that, when was the next time? A. When was the next time what?

(Testimony of Loretta Lindsey.)

Q. That you claim Mr. Lindsey had intercourse with you?

A. I didn't, but I gave him a date when I know he did, the first time he had actual intercourse.

Q. When was that? A. October 22, 1951.

Q. How old would you be then?

A. Twelve.

Q. And the first time then was on the boat when you were about nine? A. Yes. [68]

Q. And the next time you remember was at the house when you were about twelve?

Mr. Munson: Your Honor, that isn't what the witness just testified to.

Mr. Ziegler: Well, if the Court please, I have a right to cross examine her.

Mr. Munson: Yes; but, I mean, you just summed up incorrectly.

Mr. Ziegler: Oh, if I did, I am sorry for that. I didn't intend to.

Q. (By Mr. Ziegler): Well, let's—if you don't understand my questions, Loretta, I don't want you to answer them.

A. I wasn't going to answer that. I was going to tell you what I said in the first place.

Q. Don't answer any questions that you don't understand, because I am certainly not going to try to mix you up in saying anything. All I am trying to get at is the facts as you tell them. Now, as I recall your testimony, the first time this occurred was, when you were about nine years old, on the boat?

(Testimony of Loretta Lindsey.)

Mr. O'Connor: Your Honor, the first time what occurred?

Mr. Ziegler: An act of intercourse.

Mr. O'Connor: A full act of intercourse; is that the question? [69]

Mr. Ziegler: Well, that is the way I remember the testimony.

The Court: But she has already answered that. There is no use of going over the same thing.

Mr. Ziegler: Well, I have got to fix dates for the purpose of my question, your Honor.

The Court: Well, but that particular act, the first act of intercourse, is not made a part of the indictment, so you don't have to fix a date for that.

Mr. Ziegler: Well, it is cross examination, and it goes to her credibility, her reason for the story.

The Court: Well, certainly, but you better make the question something else than something that you have already asked. My point is, you have already asked the question and she has answered it.

Q. (By Mr. Ziegler): Well, when, after the incident on the boat, was the next time you claim he had intercourse with you?

A. The next time I claimed that he had successful intercourse with me was October 22, 1951.

Q. October 22, 1951? A. Yes.

Q. All right. Now, how old were you? You stated you were about nine years old when this incident occurred on the boat? [70] A. Yes.

Q. How old were you in 1951 when you claimed was the first successful act? A. Twelve.

(Testimony of Loretta Lindsey.)

Q. Twelve? A. Yes.

Q. That is a period of three years?

A. Yes; but he done things in between time.

Q. How is that?

A. He did things in between time.

Q. You mean he had intercourse with you during that three-year period? A. He tried.

Q. He tried? A. Yes.

Q. But the first time he was successful was October 21, 1951? A. Yes.

Q. And on that same day did he also have a copulation in your mouth too, the same day?

A. Yes.

Q. The same time? A. Yes.

Q. And also committed the other act of, as you described, putting his tongue in your private parts?

A. Yes. [71]

Q. That was around October 21, 1951?

A. October 22nd.

Q. October 22, 1951. And that was the time, you say, Mrs. Lindsey was in the hospital having a baby? A. Yes.

Q. All right. Now, can you tell us when the next time occurred?

A. When he had intercourse with me the next time?

Q. Yes.

A. The only date I can remember is October 23, 1952, but he had in between time a lot of times.

Q. A lot of times? A. Yes.

Q. How many times?

(Testimony of Loretta Lindsey.)

A. I couldn't estimate it. I could estimate it, let's see, in a year, between twenty and thirty times.

Q. How is that?

A. Between twenty and thirty times.

Q. Between twenty and thirty times in that one year; is that correct? A. Yes.

Q. And where did these acts take place?

A. At the house or the boat.

Q. Were there more times on the boat?

A. Yes, there was. [72]

Q. How many times on the boat?

A. Well, only about three or four.

Q. And when did that occur?

A. I don't know, but it happened in between those times in the year.

Q. Between October 22, 1951, and October 22, 1952? A. October 23, 1952.

Q. October 23rd what? A. 1952.

Q. October 23, 1952. This happened twenty or thirty times? A. Yes; but it could be more.

Q. He had intercourse with you that many times? A. Yes.

Q. Sometimes on the boat? A. Yes.

Q. Four or five? A. Three or four.

Q. Three or four. And where did this take place at home? A. My bedroom, or his bedroom.

Q. And where is your bedroom in the house, downstairs or upstairs? A. Upstairs.

Q. Where is his bedroom? A. Downstairs.

Q. And what time of the day or night? Did it happen at [73] various times?

(Testimony of Loretta Lindsey.)

A. Yes; night, day, suppertime, morning.

Q. And, as I remember it, on one occasion you said that this occurred when Mrs. Lindsey was in the house asleep? A. A lot of times it did.

Q. A lot of times it did? A. Yes.

Q. And Mr. Lindsey then went through all these acts that you testified to upstairs when Mrs. Lindsey was sleeping downstairs?

A. Some times.

Q. You said a lot of times.

A. Sometimes he did, and sometimes he didn't.

Q. Did I understand you or recall correctly that you said a lot of times she was in the house?

A. A lot of times she was what?

Q. She was in the house when he would do this?

A. She was in the house, yes; but are you talking about nighttime now?

Q. Yes; I am asking you.

A. Would you restate that sentence?

Q. Yes. I asked you how many times this happened, and asked you if Mrs. Lindsey was in the house, when this happened, awake?

A. Sometimes, and sometimes she wasn't. [74]

Q. And you said a lot of times, didn't you?

A. Yes. A lot of times doesn't mean she was there all the time though.

Q. No. I understand. Your statement is that a lot of times he did it when she wasn't there; is that right? A. Sometimes he did.

Q. Sometimes he did it when Mrs. Lindsey wasn't there? A. When she wasn't there?

(Testimony of Loretta Lindsey.)

Q. When she was not in the house?

A. Yes.

Q. And a lot of times he did it when she was in the house? A. Yes.

Q. Did I understand you to say at one time—now, don't answer this, because my memory might not be correct—did I understand you to say he did it one time when she was washing the dishes?

A. Washing the dishes?

Q. Yes.

A. I don't think I said that. I said when I was washing clothes.

Q. I am not saying you did, Loretta. Was it washing clothes or washing dishes?

A. Washing clothes.

Q. Washing clothes.

Mr. Munson: Excuse me. I think that counsel and [75] the witness are speaking of two different things. You are talking about Mrs. Lindsey, aren't you, counsel?

Mr. Ziegler: Yes.

Mr. Munson: Is that what you were referring to? A. No. I was washing clothes.

Mr. Munson: Her testimony was that he had intercourse with her one day when she was washing clothes.

Q. (By Mr. Ziegler): Did you say that this happened one time when she was cooking dinner?

A. Yes, I did. It happened—I wouldn't say one time—it happened quite a few times when she was cooking dinner.

(Testimony of Loretta Lindsey.)

Q. Two or three times while she was cooking dinner in the house Mr. Lindsey went to your room upstairs or he went to his room——

A. It was never in his room when she was home.

Q. Never in his room, but always in your room?

A. Yes.

Q. Upstairs? A. Yes.

Q. And he committed these acts when she was downstairs cooking dinner? A. Yes.

Q. Are you sure of that?

A. Some of the acts sometimes. He wouldn't do them all, that I stated in my——what I said before. He would do [76] some of them, but not all of them. Sometimes he would do all of them.

Q. Well, did he do these same things every time, Loretta? Now, did you testify on direct examination that each time he committed this act he did the same thing? I don't want to go through it. Did you so testify? A. Would you say that again?

Mr. Munson: Your Honor, I don't know whether the witness——

The Court: I think you have to differentiate, when you ask a question of that kind, between the times that she said that he did it according to the indictment and the other times in between, or otherwise you fail to understand each other.

Mr. Munson: I am just sitting here kind of confused by the periods of time here, and I don't know whether the witness——

The Court: Well, I think that is what is confusing.

(Testimony of Loretta Lindsey.)

Mr. Ziegler: Well, I was referring to the period of time after October 21st, or 22nd, 1951, when she first said that there was a successful act of intercourse.

The Court: Well, you might have been referring to it, but she didn't know it. You didn't say it.

Mr. Ziegler: Well, I think I did, your Honor; I think I asked her.

The Court: Well, go ahead and question her, but [77] you will have to differentiate between acts that are made the subjects of the counts in the indictment and the acts that are made evidentiary and not the subjects of counts.

Mr. Ziegler: Yes.

Q. (By Mr. Ziegler): Loretta, after October 21, 1951, now, that is the time, as I understand it, that you claim was the first time he had successful intercourse with you? A. Yes.

Q. Now, after that time and up until the next date that you fixed, which was October 22, 1952, you testified on your direct testimony that he did this to you a number of times? A. Yes.

Q. Twenty or thirty, was it?

A. Between twenty and thirty.

Mr. Munson: That was elicited on cross examination.

Mr. Ziegler: Well, I know, but on direct she testified, as I recall it, Mr. Munson, that he committed these acts a number of times.

Q. (By Mr. Ziegler): Well, now, Loretta, you understand my question now. You say it was be-

(Testimony of Loretta Lindsey.)

tween twenty and thirty times. Now, the question is this. Did he do the same, go through the same performance each time, do it the same way?

A. No. [78]

Q. Well, in what respect was it different?

The Court: Well, I think you ought, to make it plain, you ought to ask—did he do all three acts at the time or merely sexual intercourse?

Mr. Ziegler: Yes.

Q. (By Mr. Ziegler): Did he——

A. I said no. I said he didn't do all three things sometimes, and sometimes he did. Sometimes he would do altogether different things.

Q. Sometimes he would do all three things, and other times he would only engage in sexual intercourse?

Mr. Munson: Your Honor, I object. This has been answered at least four times by this witness. I don't know what defense counsel is doing, but it seems to me that the cross examination is just being harassingly delayed.

The Court: Well, it is repetitious, but I suppose it will be going on to something else.

Mr. Ziegler: Well, if the Court please, we certainly object to any statement of counsel intimating that the attorneys for the defendant are trying to harass this girl. We are in a position here where the defendant is accused of a serious crime, and, certainly, we are entitled to a lot of latitude in cross examining the prosecutrix.

Mr. Munson: In reply to that, your Honor, I

(Testimony of Loretta Lindsey.)

would like to point out that this girl has just turned fifteen; she [79] has been on the witness stand now for two and a half hours; and she is being asked the same questions over and over again, to which she has testified fully on her direct.

The Court: Well, there is nothing before the Court now, so there is no use of arguing anything to the Court. Proceed to your next question. There is nothing before the Court that the Court can act on. The last question has been answered.

Q. (By Mr. Ziegler): Now, Loretta, did he do these things more than once some days? Did he do them two times? A. Sometimes, yes.

Q. Sometimes two times in one night or one day? A. One day.

Q. Was there ever a day in which it occurred more than two times?

A. Not that I can remember.

Q. Now, Loretta, you mentioned something about restrictions. Who put any restrictions on you?

A. Both my mother and father.

Q. And what for? What were they?

A. Oh, various things.

Q. How is that?

A. I said various things.

Q. Could you name them, tell us about it?

The Court: Well, were they restrictions on going [80] out, if any?

A. Yes; going out.

The Court: What else, if anything, or is that the only one?

(Testimony of Loretta Lindsey.)

A. That is the only one they put on me, just going out. That is what it was always for, not going out to a show or not even going out to play with the neighborhood kids.

Q. (By Mr. Ziegler): Well, did they give you any reason for taking away of privileges from you?

Mr. Munson: I object, that the reasons aren't material, your Honor. I don't even see where it is proper cross examination.

The Court: Well, it is proper cross examination, but the reasons for the restrictions imposed by the parents are absolutely immaterial here. The parents may have their own reasons, even though they may be cockeyed.

Mr. Ziegler: Well, the only thing, your Honor, is that she stated on her direct examination that restrictions were placed on her, and perhaps the jury might get the impression that they were unduly placed or that she was mistreated.

The Court: Well, the jury isn't trying the parents here for unduly restricting any of their children. The only way that the restriction can possibly become relevant here is in view of the one bit of testimony that she gave that upon having intercourse with him once, why, he threw the restrictions [81] overboard for that evening and let her go out.

Q. (By Mr. Ziegler): Now, Loretta, you testified that Mr. Lindsey hit you?

A. Yes, he did.

Q. Once or more?

A. A lot of times.

(Testimony of Loretta Lindsey.)

Q. A lot of times. What for?

Mr. Munson: I object again, your Honor. I don't recall any—I see no materiality to this question.

The Court: It is immaterial unless it is connected up with the acts charged or in evidence.

Mr. Ziegler: That was my impression, your Honor, from her testimony.

The Court: But you didn't put it in your question.

Q. (By Mr. Ziegler): Did he hit you at any time, Loretta, in connection with these acts that you have claimed occurred? A. Yes.

Q. Now, just tell us about it.

A. What do you mean? How he hit me, or what?

Q. Well, maybe I can ask you the question. Do I understand you that after he committed some of these acts that he hit you then? A. After?

Q. Yes. [82] A. No.

Q. Or was it that he hit you because you wouldn't submit to these acts?

A. Sometimes he did.

Q. In other words, he would beat you if you wouldn't? A. I didn't say that.

Q. In other words, he hit you then?

A. Yes, he hit me.

Q. Because you wouldn't agree to do these things? A. He just hit me.

Q. How is that? A. He just hit me.

Q. And as a result of that then did you submit to what he wanted you to do; did you agree to it?

A. What do you mean?

(Testimony of Loretta Lindsey.)

The Court: Well, did you give into him after he hit you? A. Well, sure.

Q. (By Mr. Ziegler): And that happened a number of times? A. No.

Q. How many times?

A. Well, I don't know. Oh, I would say about five or six times.

Q. Five or six times he hit you and made you submit to these acts? [83]

A. He hit me, and I wouldn't want to be hit any more, so——

Q. How is that?

A. He hit me and I—and then I would rather have him do that to me than to be hit.

Q. Well, would he keep hitting you then like that until you did submit?

A. Not like that.

Q. Well, you tell me how he did it. You are the witness.

A. He would go like that, take his hand, like that, and hit me like that.

Q. Hit you in the face? A. Yes.

Q. Now, what I am trying to find out, Loretta, did he keep on hitting you until you said you would do it? A. No.

Q. He just hit you once?

A. Once or twice or three times.

Q. Now, Loretta, when you first went to the Riewolds and these other people, just tell me and the jury what you told them Mr. Lindsey had been doing.

(Testimony of Loretta Lindsey.)

Mr. Munson: Is the defense adopting this witness now?

Mr. Ziegler: It is cross examination.

Mr. Munson: We didn't go into that on direct, your Honor. [84]

The Court: Well, I thought that there was some testimony as to her making a complaint to the Riewolds. If so, it is proper cross examination.

Mr. Ziegler: I want to see if she made the same statement then as she is making now, your Honor. That is the purpose of the question.

The Court: You may ask it.

Mr. Munson: Before counsel goes on——

Mr. Ziegler: I am waiting for you to give you time.

Mr. Munson: I would like to notify the Court now that, since the defense has opened up this area, I intend to call witnesses to testify as to what actually went on between these people that the complaining witness talked to.

The Court: Well, I don't quite understand what you mean by "what actually went on".

Mr. Munson: Your Honor, I don't believe, unless I am badly mistaken, I don't believe that I——

Mr. Gilmore: He is testifying now. Excuse me.

Mr. Munson: I am not testifying.

Mr. Gilmore: I thought you were going to say what you believed.

Mr. Munson: No. I don't believe that I asked the witness anything about what she said to——

The Court: Well, you didn't ask her about what

(Testimony of Loretta Lindsey.)

she said perhaps, but she did say that she went down and told the Riewolds, as I recall. [85]

Mr. Gilmore: At least twice, as I recall.

The Court: And, if she said that, why, then he would have a right to cross examine her and ask her what it was she told them.

Mr. Munson: Yes, your Honor.

Q. (By Mr. Ziegler): All right, Loretta, just tell us and the jury what you told Riewolds that your father had done to you.

A. I went over and told Don and Ann Riewold, what I told them—when I first went over there I didn't tell them anything about what my father had done to me. I told them they would have to just get a new baby sitter and housekeeper as I was going to run away and go down to see my Mom, and then Don asked me himself if that was all I said, if that was all, if it was the only reason why I was doing it, and I told him no, but then later I told him, yes, there had been something else, and I told him what my father had done to me, and he said he suspected that the way I was acting.

Q. Now, what did you tell him your father had done to you, Loretta?

A. Just what I said before, what he had done.

Q. Well, isn't it a fact, Loretta, that you told Mr. Riewold that your father had raped you?

A. I don't know if I used that word or not. I could have, [86] but I don't remember.

Q. Now, let me ask you this question. Did you tell him, tell Mr. Riewold, that your father had

(Testimony of Loretta Lindsey.)

done these other things to you that you are now telling in court?

A. What do you mean by "other things"?

Q. Putting his penis in your mouth and the other things.

A. I told him that he had stuck his penis in my mouth, and he told me not to tell Ann that or she would get sick.

Q. You told Mr. Riewold that? A. Yes.

Q. Did you tell him about the other act of putting his tongue—— A. I don't remember.

Q. You don't remember that? A. No.

Q. Now, do you remember, Loretta, when you had the hearing and trial in the Commissioner's Court here the last of May and you appeared as a witness there and told about this? A. Yes.

Q. Did you tell anything there about putting his penis in your mouth and this other business?

The Court: Well, a question of that kind is improper unless you first ask whether she was asked the question whether she did that, otherwise it is meaningless. [87]

Q. (By Mr. Ziegler): Now, Loretta, you just stated that you told the Riewolds, I think, you wanted to go away and go down and see your Mom?

A. Yes.

Q. And how long before you told the Riewolds about this had you been thinking and planning?

A. I hadn't planned it at all.

Q. You hadn't planned it at all? A. No.

Q. And, now, did you say, when you made this

(Testimony of Loretta Lindsey.)

statement last August, that you wanted to get away from Ketchikan, or words to that effect, wanted to go to see your Mom, and that was the reason you had told these things about Mr. Lindsey? Did you say that? A. No.

Q. Didn't you say that in the statement you signed up in the lawyer's office?

A. Then I did, yes, but it was all a lie.

Q. Well, now, Loretta, let me understand you. Do you just tell lies at your convenience to suit you, or do you do it because you are forced to tell lies?

Mr. Munson: I object, your Honor. That is an argumentative question, your Honor.

Mr. Ziegler: No, it isn't. It is a fair question, your Honor. [88]

The Court: Well, I think the question is permissible. At least she can be asked why she would say—why she would tell the lies that she says she told.

Mr. Munson: Well, then I object on the ground that he has asked her two questions and it would be impossible for her to answer both of them with one word.

Q. (By Mr. Ziegler): Well, Loretta, that was a lie then that you told up there in the statement if you said that the reason you made these charges was that you wanted to go to Seattle; that was a lie, wasn't it?

A. What? I don't understand you.

Q. Now, I don't want you to answer a question

(Testimony of Loretta Lindsey.)

unless you understand it. Did you, when you made the statment up in the office——

A. What office?

Mr. Munson: Your Honor——

Q. ——before Bob Ziegler——

Mr. Munson: ——excuse me, counsel. We are back to this affidavit that has been ruled out of evidence now. I wonder, your Honor, if the rule of the Court excludes this particular question?

Mr. Ziegler: Well, I think I can divorce it entirely from this statement.

The Court: Well, if you can do that, why, you can, of course, cross examine her as to the occurrence. [89]

Q. (By Mr. Ziegler): Loretta, did you at any time tell anybody that the reason you made the charges against Mr. Lindsey was that you wanted to leave home, to get away from home, and go to your Mom in Seattle?

A. Yes; but that wasn't why I did it though.

Q. Now, that was a lie, wasn't it?

A. Yes.

Q. Are you—do you often tell lies then, Loretta? A. No.

Q. Well, you know it is wrong, don't you, to be telling lies?

A. I know, but I did that just so I could go back to my Mom and Dad and my little brother and sisters.

Q. And the man who had committed all these atrocities on you, that you testified to, you were

(Testimony of Loretta Lindsey.)

willing to tell a lie in order to come back under his roof; is that true?

A. I really wanted to come back because of my Mom and my little brother and sisters.

Q. Now, what was your reason?

A. Because I wanted to come back to my Mom and the kids.

Q. You wanted to come back to your Mom and the kids? A. Yes.

Q. And you knew Mr. Lindsey was there, didn't you?

A. Yes; but I thought I could trust him after I told all that, which he knew was true and he still does.

Q. But in order to do that you told a lie? [90]

A. Yes.

Q. And on top of that, as I understand your testimony, in order to get away from Wrangell, to get away from the Welfare, where you were placed, you even accused the Marshal, Mr. Krepps, up there of raping you? A. I didn't say rape.

Q. Well, of being the father of your child?

A. I don't have any child.

Q. Well, didn't you say, when you testified before, that you told Mrs. Krepps that you were pregnant?

A. I didn't tell her that. I made her think that though.

Q. You made her think that? A. I did.

Q. And, when she asked you, you blamed Mr. Krepps for it, didn't you?

(Testimony of Loretta Lindsey.)

A. I told her that Jack was the one.

Q. You told her that Jack was the one. And you go to the extent of accusing an innocent man, Mr. Krepps, of this very crime now you are charging your father with?

A. I did that and made up that affidavit because I love my Mom and the kids and I still do.

Q. And you want the jury then to believe that one time you are telling the truth and the next time you are telling a lie?

The Court: Well, that is an improper question. The [91] jury is not bound by anything the witness wants done. The jury has got to use its own judgment about what they will believe.

Q. (By Mr. Ziegler): Now, Loretta, how long had you been thinking about this deal at Wrangell in order to get away from there and come back home—many days? A. No.

Q. Or did it come on all at once?

Mr. Munson: I object to the question as immaterial, your Honor.

The Court: Objection sustained.

Q. (By Mr. Ziegler): Well, Loretta, before you did come back, I understood you to say you wrote some letters to your mother and father?

A. I wrote one letter.

Q. One letter? A. Yes.

Q. And who were the other letters to, if you wrote one letter to them?

A. I wrote some separate letters inside, but one was for my Dad, and one was for my Mom, and I

(Testimony of Loretta Lindsey.)

wrote one to Randy and Janice even though they couldn't read it.

Q. Now, when you came to their house, after getting back from Wrangell, on August 25th, I think you testified to, they hadn't even received those letters, had they? [92]

A. At least they told me that.

Q. How is that? A. They told me that.

Q. They told you that they hadn't gotten any letters? A. Yes.

Q. Do you recall what you said in those letters?

A. Like I said before, I told them that I was dropping the charges against them and that I was sorry that I did it and they weren't true. The reason I said they weren't true was because I knew my mother would probably read all those.

Q. Who? A. My mother.

Q. Well, when you wrote those letters, had you succeeded then in getting Mr. Krepps' consent for you to come back to Ketchikan?

A. Yes. They even read those letters.

Q. They read them before you even sent them?

A. Yes.

Q. And did Mr. Krepps at that time call the District Attorney and tell him about it?

A. I don't know what he did.

Q. Is that the letter I have asked you about Loretta? A. Yes, it is.

Mr. Munson: Could I see those letters? [93]

(Mr. Ziegler handed documents to Mr. Munson.)

(Testimony of Loretta Lindsey.)

Mr. Munson: No objection.

Q. (By Mr. Ziegler): These—there are four letters here, Loretta, I think. I will ask you if they are all signed by you? A. Yes.

Q. They are all? A. Yes.

Mr. Ziegler: We will offer them in evidence, if the Court please. There is no objection.

The Court: If there is no objection—

Mr. Munson: No objection, your Honor.

The Court: —they may be admitted.

Mr. Ziegler: And this is the envelope they came in.

Clerk of Court: You are introducing them as one exhibit? They will be Defendant's Exhibit A.

Mr. Ziegler: Now, these letters, if the Court please—I will read this letter, so I can ask whatever questions I want, dated August 22, 1954, 10:15 p.m. "Dear Mom"—

The Court: Well, now, if you want to ask questions, why don't you just ask her what questions you want instead of reading them? She has already read them and she knows what they contain apparently.

Q. (By Mr. Ziegler): Did you say in this letter, Loretta, addressed to "Dear Mom"— [94]

The Court: She has already admitted everything in the letter, so just ask her what else you want to ask without that repetition.

Mr. Ziegler: I was going to read the letters in evidence at this time.

The Court: Well, I thought you were going to ask her questions.

Mr. Ziegler: Not necessarily.

(Testimony of Loretta Lindsey.)

The Court: Well, the letters will apparently go into the jury as exhibits, will they not?

Mr. Ziegler: Yes, your Honor.

The Court: Well, unless you are going to ask her questions from the letters, there is no necessity of reading them now.

Mr. Ziegler: Well,——

The Court: You can read them on argument, and they will go to the jury to be read.

Q. (By Mr. Ziegler): Well, Loretta, in these letters that you wrote you asked forgiveness from your father and mother for what you did, didn't you? A. Yes.

Q. And told them that you had made a mess of things? A. That is what I said.

Q. You told them that——

The Court: You are doing just what I said. She [95] has admitted everything in the letters, so you will have to ask her something else. There is no use of repeating to her what she has already admitted and asking her if she said that or wrote it. She has already admitted it. The reason I say that is we have been making a snail's pace here most of the afternoon, just like molasses.

Q. (By Mr. Ziegler): Now, Loretta, you have testified on—when Mr. Munson was questioning you—that you had trouble at home?

A. That I what?

Q. That you had trouble at home before you made these charges, trouble with your parents?

A. I don't remember it.

(Testimony of Loretta Lindsey.)

Q. Well, then, if you didn't, let me ask the question then. Did you have trouble at home?

A. When do you mean?

Q. Before—at any time from the time they adopted you up until the time you made these charges.

Mr. Munson: I object, your Honor. That is certainly a broad question.

The Court: That is all she has been testifying to, is trouble, here. Now, if you want to ask a question of that kind, let me suggest that you ask if she had trouble other than the trouble she has already testified to.

Mr. Ziegler: Yes. Well, I certainly wasn't referring [96] to the trouble she testified to.

The Court: Well, she has been testifying to her troubles all afternoon.

Q. (By Mr. Ziegler): Did you have trouble at home, Loretta, not what you testified to, what your father did, but any other trouble with your parents that caused you to run away?

A. I ran away before I was adopted; at least before I thought I was adopted.

Q. And did you run away afterwards?

A. Yes.

The Court: Well, now, this is too remote. As I understand it, that must have been about five years before this case was initiated.

Mr. Ziegler: Well, your Honor, the witness has testified to improper conduct and acts of the defendant commencing with about the first year she

(Testimony of Loretta Lindsey.)

was adopted, when she was around seven years old, and that is the period I am trying to cover.

Mr. Munson: Well, your Honor, I presume that the cross examiner here is trying to evoke testimony showing hostility toward the defendant. I can't imagine any other ground for it.

The Court: Well, it seems to me the only point on which it would be material would be on motive.

Mr. Ziegler: That is the purpose.

Mr. Munson: Well, her motive when she was seven years old——

The Court: Seven or eight years ago is certainly too remote. You would have to bring it more down to date than that.

Q. (By Mr. Ziegler): Loretta, when did you run away from home the last time before you made these charges? You made these charges in April or May of this year. Now, when was the time just before that that you ran away?

A. I don't remember the date, the year, the month, or anything like that.

Q. Was it the year before that date?

A. I don't know.

Q. Well, what is your best memory?

A. I know though that Randy was born and Janice was born. I know I ran away just right after Christmas.

Q. Now, Loretta, did you get mad at your mother and father for telling you that they weren't going to put up with these troubles any more and were going to send you to the Haines School?

(Testimony of Loretta Lindsey.)

A. What troubles?

Q. Well, I am asking you. Did you get mad when they told you that and that they were going to send you to the Haines School? [98]

The Court: Well, first you better ask her if they told her that.

Mr. Ziegler: Yes.

Q. (By Mr. Ziegler): Now, Loretta, were you advised by your parents that you would have to go to the Haines School this last school term, starting in September? Did they tell you at any time this year that they were going to have to send you to the Haines School?

Mr. Munson: I object. I think the question is immaterial, your Honor. I don't see how it possibly bears on this case.

The Court: Well, it isn't apparent to me either, but maybe he is directing the question to a possible motive of some kind.

Mr. Munson: It is certainly immaterial in so far as Mrs. Lindsey is concerned.

Mr. Ziegler: It is preliminary to what I think is material, your Honor.

The Court: Go ahead with the next question.

Mr. Ziegler: And the Court can rule on that when the time comes, which he will if there is an objection.

Q. (By Mr. Ziegler): Did they tell you, Loretta, that they were going to send you to the Haines School? A. They told me that.

Q. And you didn't like that, did you? [99]

(Testimony of Loretta Lindsey.)

A. I didn't.

Q. You didn't want to go to Haines?

A. No. In fact I was glad.

Q. You were glad. You never told them that you didn't want to go to Haines?

A. I told them I didn't want to go at the time; yes.

Q. Now, when you filed these charges, as I understand it, you wanted to get away from the Lindseys, didn't you? You wanted to get away from Ketchikan?

A. No.

Q. You didn't want to get away from them?

A. All I wanted to do was see that Mr. Lindsey, whatever he had done to me, pay for it. I didn't want to leave Ketchikan, and I didn't want to leave home.

Q. Well, when you told Mr. Riewold, didn't you call your stepmother in Seattle?

A. Yes, I did.

Q. And told her you were coming down there?

A. I told her, because of what had happened here, I couldn't stay here.

Q. And you hadn't written any letters or made any plans about leaving Ketchikan before you made this charge?

A. No.

Q. Is that your writing, Loretta?

A. No. [100]

Q. It is not your writing? A. No.

Mr. Munson: Could I look at that?

(Mr. Ziegler handed document to Mr. Munson.)

(Testimony of Loretta Lindsey.)

Q. (By Mr. Ziegler): You are sure that is not your writing, Loretta? A. Yes.

Q. If this were found in your books after you left the Lindsey home, would you still say it wasn't your writing? A. Yes.

Q. Do you know whose writing it is?

A. No, I don't.

Q. Now, Loretta, did you get any ideas about making these kind of charges from reading any mystery magazines or——

A. I don't read very well, and so I don't like to read. No; I didn't.

Q. You don't read mystery magazines?

A. I do, but I don't understand them.

Q. You don't understand them? A. No.

Q. What grade are you in in school?

A. I am in the eighth grade.

Q. Why do you read these mystery magazines if you don't understand them?

A. I don't read them. [101]

Q. Oh, you don't read them?

A. No. I read——

Q. I beg your pardon. I thought you said you do read them but you don't understand them.

Mr. Munson: Your Honor, I object to this question about mystery magazines on the ground that the subject matter of mystery magazines has nothing to do with this case and that the question is another collateral issue that we are going to spend a lot of time on and get nowhere.

The Court: Well, it wouldn't be collateral if he

(Testimony of Loretta Lindsey.)

could call her attention to a specific book that he had some reason to think that she read, but, just asking generally whether she reads books, why, the objection will be sustained.

Mr. Ziegler: I had reason to think she read them because she said so, your Honor, in her statement.

A. I told you that was a lie.

Q. (By Mr. Ziegler): And that is another lie then?

Mr. Munson: Your Honor, we continually come back to this statement which has been excluded about five times from the evidence.

The Court: All reference to the statement must be avoided in any questions to the witness at the present time.

Q. (By Mr. Ziegler): Now, getting back to the time that you claim that Mr. Lindsey did these things in the house, you stated that your mother was there some of the times? [102]

A. Yes.

Q. Was anybody else, outside of the little children?

A. My brother Bob could have been there a few times.

Q. How is that?

A. My brother Bob could have been there a few times, but I don't remember.

Q. He could have been there a few times. And where was his room?

A. Right down the hall from mine.

Q. On the upstairs? A. Yes.

(Testimony of Loretta Lindsey.)

Q. Do I understand then that Mr. Lindsey went into your room with your brother right close by and committed these acts?

A. He wasn't. I don't remember seeing him. He wasn't upstairs.

Q. Well, I thought I understood you to say that he could have been there?

A. I said he could have been, but I didn't say upstairs.

Q. Well, now, what is the fact, right now?

A. He could have been in the house, downstairs.

Q. He could have been in the house, downstairs. And in addition, to your mother being there in the house when some of these things were done, then your brother Bob could have been there?

A. My mother was there sometimes. My brother Bob could have [103] been.

Q. Could have been. You don't know?

A. I don't remember.

Q. And you couldn't swear that he ever was in the house when Mr. Lindsey did that?

A. When she was up or asleep?

Q. How is that?

A. When she was up or asleep?

Q. No. I am talking about Bob.

A. I thought you were talking about my mother.

Mr. Munson: Your Honor, I think I can help counsel out in his cross examination of this witness, if he would specify the time of the day that he is referring to, to give this witness some idea of what period of time is sought to be encompassed by the

(Testimony of Loretta Lindsey.)

question. I didn't know what was going on in the last interchange myself.

Mr. Ziegler: Well, I think it is very important, if the Court please, to know about——

The Court: There is nothing before the Court to rule on.

Mr. Ziegler: The objection was made, and I will ask the question.

The Court: But the question has been asked and answered, so there is nothing before the Court.

Mr. O'Connor: Your Honor, may we object to any [104] further questions that fail to specify the time of day or an occurrence that might have occurred?

The Court: I don't know why we need to get down to the details or the time of day or anything.

Mr. Munson: Well, I can tell you why, your Honor. The witness testified that at certain times of the day Bob was there and Mrs. Lindsey, and at other times when Mrs. Lindsey was not home, and at other times when she was home, and the cross examination is so broad that it was impossible for her to answer the questions that were directed to her.

The Court: Well, you mean, the questions of counsel always assume that Bob was there; is that it?

Mr. Munson: Always assume that somebody was there.

Mr. Ziegler: I didn't intend to create that impression, your Honor. I am asking——

(Testimony of Loretta Lindsey.)

The Court: Well, let's go on. We are going too slowly here. The first thing we know we will have the jury sitting out on Thanksgiving Day.

Mr. Ziegler: I appreciate the time that it is taking, your Honor. However, as I stated before, this is not a petit larceny case.

The Court: Well, you are just taking up more time now in making those statements.

Q. (By Mr. Ziegler): Now, I want to understand you thoroughly, Loretta, about Bob, your brother. Now, you have [105] testified only to three definite dates that he did these things. In between you have fixed no dates. Was Bob in the house on the 21st of October, 1951, when you claim Mr. Lindsey did these things?

A. I don't know. I wasn't there either.

Mr. Munson: You gave the wrong date. October 22nd.

Q. (By Mr. Ziegler): October 22nd; was Bob in the house then?

A. Yes; for about—till he got his lunch eaten.

Q. Well, was he in the house when Mr. Lindsey was doing these things to you?

A. No, he wasn't.

Q. He wasn't. All right. Now, the next time was October 22, 1952, wasn't it? A. October 23rd.

Q. October 23, 1952; was Bob Lindsey in the house then? A. No.

Q. The next time was in February this year, a definite date; was Bob Lindsey in the house then?

A. No.

(Testimony of Loretta Lindsey.)

Q. All right. Now, in between those times, from October, 1951, to the present time, can you tell us whether Bob was in the house when any of these things were going on?

Mr. Munson: I object on the ground that this is immaterial, your Honor. I don't see any possible materiality to whether Bob was in the house on other occasions or not. [106]

Mr. Ziegler: It is only on other occasions when he was committing these acts, and I think it is very material, your Honor.

The Court: It is proper cross examination. You may answer that, if you know.

A. What do you mean—morning, noon or night?

Q. (By Mr. Ziegler): You tell me whether he was there in the morning, at noon, or at night, at any time when you claim Mr. Lindsey did these things to you.

A. He was there in the early morning when Mr. Lindsey did those things to me.

Q. What time of the morning was it?

A. Well, early morning.

Q. Early morning.

The Court: You mean, while everybody was still abed? A. Yes.

Q. (By Mr. Ziegler): And when was that? You can't fix a date for that at all?

A. No, I can't. He did that so many times.

Q. How is that?

A. I said he did that so many times. I don't know what day it was.

(Testimony of Loretta Lindsey.)

Q. But that is the only time you know when Bob was there; is that right?

A. He could have been there when my mother was up too; that [107] was during suppertime or something like that.

Q. You mean that he committed these acts while the supper was going on?

A. While she was fixing supper.

Q. While she was fixing supper, he was upstairs doing these things?

A. He was downstairs or outside, but he was around the house.

Q. You mean Mr. Lindsey, or Bob?

A. My brother.

Q. But was that when Mr. Lindsey was doing these things to you?

A. When Bob was around?

Q. Yes.

A. Yes, he was, and my Mom and——

Q. While your mother was getting supper?

A. Yes.

Q. Now, Loretta, when you first testified in the case here in the Commissioner's Court at the preliminary hearing, did you know what the word "perjury" meant? A. No, I didn't.

Q. But did you find out later on what it meant?

A. Yes.

Q. And when?

A. When I was up in Wrangell.

Q. Mr. Krepps told you, did he? [108]

A. Yes. He explained that——

(Testimony of Loretta Lindsey.)

Q. And what did he tell you perjury meant?

The Court: Well, now, why do we have to go into this? It is just part of her education, I suppose.

Mr. Ziegler: Well, when it comes time, your Honor, to introduce this statement, I think it will have a bit of a bearing on whether she knew she was doing wrong and committing a crime.

The Court: Well, you can ask her when she first found out the meaning of perjury without going into all the details of her finding out.

Mr. Ziegler: Very well, your Honor. I don't think—I don't recall any details. What was the question that I asked? What was the question I asked her about perjury?

The Court: Well, you asked her about four or five, and you could have asked it in one question. When did you first find out the meaning of perjury? Just answer that.

A. When I was at Wrangell.

The Court: Well, I think she already said that.

Q. (By Mr. Ziegler): That was before you made this statement in front of Bob Ziegler, wasn't it?

A. Yes.

Q. So, when you made the statement and swore to it before a notary public, you knew what perjury meant?

A. Yes. [109]

Q. And you knew what could happen to you?

A. Yes.

Q. And you were willing to do that just in order to be able to come back home?

(Testimony of Loretta Lindsey.)

The Court: Well, she has answered that a half a dozen times.

Mr. Ziegler: Did you say there was an objection, your Honor?

The Court: I said she has answered that a half a dozen times.

Mr. Ziegler: Oh, I beg your pardon.

Q. (By Mr. Ziegler): Now, Loretta, after this statement was made and you were around Mr. Lindsey's house, after August 25th, this year, as I understand it, you were there quite often; that was your home, was it; but you were staying at the McMasters'; is that right?

A. I visited them a lot; yes.

Q. And you say that you kept going there for how long?

A. What do you mean—how long? How many hours or how many days?

Q. No. When did you stop going to the Lindsey house? A. Since I was subpoenaed.

Q. After you were subpoenaed, then you didn't go there any more? A. No. [110]

Q. Who told you you couldn't go there?

A. Nobody did.

Q. All right. Nobody did. Now, did you testify that up to the time you left there on account of the subpoena being served that Mr. Lindsey attempted or tried to do this thing to you again? Did he?

A. You mean after I got the subpoena?

(Testimony of Loretta Lindsey.)

Q. No. Before you got the subpoena; when you were friendly and going up there?

A. Yes, he did.

Q. He tried to do this again? A. Yes.

Q. After you had made all these charges against him? A. Yes.

Q. In the spring, you had come back to Ketchikan and asked his forgiveness and you were around the house there many times, and he attempted to do this very thing again? A. Yes.

Q. Tell me about it. Where did it happen? What was the date?

A. Like I said before, it was at the Lindseys' house, and Mrs. Lindsey wasn't home, and Janice and my Dad were, and I was playing with Janice, and she went to sleep, so I put her to bed and I came back out there and just sat down, and we were talking about this, and he asked me if I [111] missed it, and I told him, no, I didn't, and then he said, "Well, do you want it?" And I said, "No." And then I knew that I better leave before something happens, and then just then my grandmother came in.

Q. You knew then that he was out on heavy bail on this charge, didn't you? A. Yes.

Q. And notwithstanding that you now want the jury to believe that he attempted this again?

Mr. O'Connor: I object to that question, your Honor, on the ground of what she wants the jury to believe is irrelevant.

The Court: Objection sustained. It is immaterial

(Testimony of Loretta Lindsey.)

what she wants anybody to believe.

Q. (By Mr. Ziegler): Now, Loretta, when you got back from Wrangell and went into the Lindseys' home, you testified something about cotton balls that were used when he was committing these acts. You remember that, don't you?

A. Cotton wads; yes.

Q. Cotton wads. And did I understand you to say that when you came back from Wrangell you went upstairs?

A. Yes.

Q. To try to find these?

A. I didn't say to try to find them.

Q. Oh. Then I misunderstood you. I don't want to say [112] something you didn't say. Did you go upstairs to look for them?

A. I went upstairs. I don't know what I was looking for, but I went up to see what condition my room was in.

Q. I see. Well, did you make an examination around there?

A. I took a look. I looked in where I had those things, and it was cleared out.

Q. They were cleared out?

A. Yes.

Q. Well, where were they?

A. They were in my closet, not exactly my closet, but they were in the closet.

The Court: You mean, they had been in your closet; isn't that what you mean?

A. Yes.

The Court: You didn't see them there when you went upstairs?

A. No.

(Testimony of Loretta Lindsey.)

Q. (By Mr. Ziegler): But you weren't looking for them then?

A. No; but I knew they weren't there.

Q. How did you happen to think about those cotton balls. What brought it to your attention to notice that they weren't there?

The Court: Well, how could that be material?

Mr. Ziegler: To me it would be, your Honor, but I [113] realize the Court is the one to say whether it is material, and I submit to the Court's ruling.

The Court: Well, it is evident from her testimony now, both on direct and cross, that she happened to go up to her room to look around and noticed that they were gone.

Mr. Ziegler: It struck me as curious why she would be interested in these things under the circumstances.

The Court: Curiosity doesn't make something competent.

Mr. Ziegler: If the Court will bear with us just a minute while I consult with counsel.

Q. (By Mr. Ziegler): Loretta, I asked you before if you had planned to run away before you made these charges against your father, and you said, "No"? A. Yes.

Q. (Handing document to Mr. Munson and then to the witness.) Is that your writing?

A. Everything but that.

Q. Everything but what?

A. Everything but this.

(Testimony of Loretta Lindsey.)

Q. That is not your writing? A. Not this.

Q. Is this your writing here underneath it?

A. No. Everything what this says is not my handwriting.

Q. That is not your handwriting. You had a girl friend [114] named Sherry, didn't you?

A. Yes.

Q. Isn't this addressed to Sherry?

A. Yes, it is addressed to her, but I didn't write what that said.

Q. Did you write any part of it?

A. Yes, I did.

Q. Well, what part did you write?

The Court: Well, she said everything except that and point to it. Isn't that enough?

Mr. Ziegler: It doesn't mean anything to me, your Honor. She said, "Everything but that." I asked her if she wrote this, and she said, "Not that" either.

A. I said, everything but this.

Mr. Munson: You mean, that part in the block?

A. Yes.

Q. (By Mr. Ziegler:) Well, you want to swear then, as I understand it, that this is not your writing? A. No.

Q. All right. Do you know whose it is?

A. No, I don't.

Mr. Munson: Your Honor, that card that was just shown to the witness, which she says that she wrote everything but the middle block, is certainly not objectionable as far as I am concerned, and I would just as soon it were introduced as [115] an

(Testimony of Loretta Lindsey.)

exhibit so the jury wouldn't get a misconception that there was anything in it that might possibly be damaging to the Government's case.

Mr. Ziegler: Well, if the Court please, if we can establish by other evidence that it is her writing, then we will consider introducing it. If it isn't her writing, certainly, she isn't bound by it. I don't want to introduce something that she didn't write.

The Court: Well, it all depends what you want it introduced for. If you want it introduced for the writing that she admits, why, then it may be admitted now. If you want it introduced for the writing that she doesn't admit, why, of course, it can't be introduced.

Mr. Ziegler: That is correct, your Honor.

Mr. Munson. Your Honor, I would like to—I don't think I made myself quite clear, but the counsel for the defense has brought a couple of cards or something over to this witness and asked her if she admitted or denied them, and this last one she denied writing a portion of that. As far as the Government is concerned, those cards can be admitted into evidence.

The Court: Well, I think he understands that.

Mr. Ziegler: I understand thoroughly, but, if she denies the writing, it doesn't have any effect. It doesn't bind her. If it is somebody else's writing, she wouldn't be [116] bound by it.

Mr. Munson: Do you want to introduce them for what they show?

Mr. Ziegler: If we can establish that it is her

(Testimony of Loretta Lindsey.)

writing, then, of course, we want to introduce them. She isn't bound by what she didn't say or do. That is all, your Honor, on cross examination.

Whereupon the jury was duly admonished and Court adjourned until 10:00 o'clock a.m., November 23, 1954, reconvening as per adjournment, with all parties present as heretofore, and the jury all present in the box; and the trial proceeded as follows:

The Court: You may call your next witness.

Mr. Munson: Your Honor, the Government is not going to redirect on the first witness, and we will call Robert Lindsey to the stand as the Government's second witness. Your Honor, I would like to call the Court's attention to the fact that the exclusion order that was entered heretofore applied only to the complaining witness.

The Court: Well, I am well aware of that. I suppose that the Marshal is also aware of it. [117]

ROBERT LINDSEY

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Munson): Would you state your name, please? A. Robert Lindsey.

Q. Speak up a little louder. How old are you, Robert? A. Seventeen.

Q. When did you turn seventeen?

A. Last March.

Q. Are you the brother of Loretta?

(Testimony of Robert Lindsey.)

A. Yes, sir.

Q. And the adopted son of the defendant here?

A. Yes, sir.

Q. You have been formally adopted by him?

A. Yes, sir.

Q. How old were you, do you remember, when you were adopted by him? A. No, I don't.

Q. How long have you lived with the Lindseys?

A. I would say it was when I was—I think I was eleven or ten; I think I was eleven.

Q. Are you living with them now?

A. No, sir.

Q. Where are you living now? [118]

A. Well, I am going to school.

Q. What school?

A. Sheldon Jackson Junior College in Sitka.

Q. Now, I want to direct your attention back to the time when you were living at the Lindsey home and ask you if at any time during that period you noticed anything unusual, anything at all unusual, going on between Loretta and Rolland Lindsey? A. Yes, I did.

Q. Well, would you tell the jury and the Court what it was?

A. Well, I would notice sometimes in the early morning—my father wasn't in most of the time, and, when he did come in, I would notice sometimes in the early morning—he would have to pass my bedroom to get to my sister's bedroom, and I would notice that some mornings he would go up the stairs and come to see if I was asleep, and

(Testimony of Robert Lindsey.)

sometimes I was asleep, and sometimes I played like I was asleep, because I wanted to know what was going on, but I never pressed it any more than I had to, so he would come in and he would look at me and he would make sure that I was asleep, and then he would close the door and he would go down to my sister's room, and he would stay there for, oh—I was just guessing when I said an hour and a half or an hour, sometimes more, sometimes less, but I would try and listen and—— [119]

Q. Well, you say you tried to listen. Did you listen?

A. Well, I tried to, but I couldn't get out of bed because I figured that my bed would make a lot of noise.

Q. Did you hear any noise on those mornings?

A. No; not all the time. Sometimes I heard the bed in her room squeaking, but other than that I couldn't hear anything; I mean, it was just absolute silence; there was nothing.

Q. Did you hear any talking?

A. No. I never did hear any talking at all.

Q. Well, were you still awake on those mornings?

A. Yes, sir.

Q. Did you ever see him leaving?

A. Leaving her room?

Q. Yes.

A. Yes; a couple times. Most of the time he already went downstairs before I was up. Sometimes I would just forget about it and go back to sleep.

(Testimony of Robert Lindsey.)

Q. Did you ever see Loretta leaving her room after one of those occasions? A. Yes.

Q. How would you describe her?

A. Well, sometimes I saw her—sometimes I know she wasn't herself, because she had tears in her eyes sometimes, and other times there was just nothing that I could tell [120] that was out of the ordinary; I mean, it was just strictly nothing.

Q. Well, were there any other times while you were living at the Lindsey home that you noticed peculiar behavior on the part of the defendant Rolland?

A. Well, I would notice when my mother was cooking dinner at times—it was mostly on Sunday—I can recall one Sunday, but I can't recall the date, but it was last spring, and my Dad had sent my sister up to clean her room, and I don't know whether she was cleaning her room or not, but he laid down on the couch and about fifteen minutes later he went up there and he stayed up there, and my mother asked me at the time where Rollie was and then she asked me where my sister was, and I told her they were upstairs, and she didn't press it any further than that, but he stayed up there with her a number of times, but I don't know what he was doing or anything.

Q. He stayed up there, you say, a number of times?

A. Yes, sir; but I don't know what he was doing.

Q. While Victoria was down cooking the dinner?

A. Cooking dinner, yes; and I was down with the children.

(Testimony of Robert Lindsey.)

Q. You were there?

A. Yes; downstairs in the front room.

Q. You were down there taking care of the kids?

A. Well, I was looking after them; yes. [121]

Q. Now, I want to call your attention to a particular incident and have you tell the jury in your own words exactly as you remember it. I am referring to a date on which you were sent on an errand by the defendant to go downtown and when you came back you noticed that the Diamond T was out in the harbor.

A. Well, I had been working on the boat that day, and my Dad said he needed some rags for the boat.

Q. Where was the boat tied up?

A. It was tied up—well, we took it from Thomas Basin, and then we took it down to New England Fish Company.

Q. It was tied up at New England Fish Company?

A. Yes, at the time. And, then, so he went up and called home and he called my sister and he told her to come on and bring some oil rags down for the engine, and then, after she got down there, there was a broken pane of glass in the front of the boat, as I remember it. I think that is what he sent me for, was for a pane of glass, and he told me to go up to Tongass to get it, and I went up to Tongass and I came back, and the boat was out in the harbor drifting, and then after that I don't remember what I did with the glass, but I know that

(Testimony of Robert Lindsey.)

I forgot about it, and then I went uptown and fooled around, and that night I asked him what was the matter, and he said that the engine had stalled, and that is as [122] far as it went. I never pressed it any further than that.

Q. Well, did Loretta tell you what happened that day? A. No, sir. I didn't ask her.

Q. At any time did she tell you?

A. No, sir. Oh, yes, she did tell me when she told me the whole story this year, I mean, this spring; that was just before she made the charges.

Q. What did she say?

A. She told me that——

Mr. Ziegler: Just a minute. I think that is immaterial, if the Court please.

Mr. Munson: Your Honor, the defense counsel yesterday on cross examination asked Loretta who she told the account to of the acts of the defendant.

The Court: But he has already said that she told him, and that doesn't make admissible over objection the details.

Q. (By Mr. Munson): Well, was this sending you on errands an unusual thing or uncommon?

A. No, it wasn't unusual. I didn't recall it until she told me what happened on the boat; I mean, I just forgot about it; a lot of things that I remember, that I forgot about, that after she told me, I knew that there was some connection there, otherwise I had forgot completely about them. [123]

Q. Now, after Loretta, before she made these charges against the defendant, didn't she tell you

(Testimony of Robert Lindsey.)

pretty much the details of the relationship? Did she show you anything? A. Yes.

Q. What did she show you?

A. She showed me that up in her room she had what they call these cotton—we were going to stuff chairs at our house, and she showed me this cotton, and I felt them, and she said there was sperm on them, and I felt them, and they were stiff, and then my grandmother was there; my sister and grandmother and I were there at the time, and my grandmother and I saw them and——

Q. Where were they?

A. They were in her closet in her room.

Q. Did you see anything else?

A. No, I didn't see anything else, except that, well, these two nephews of my Dad's that were staying here with him—Loretta said that he always kept his rubbers up in the wall, I mean, up in the rafters, between my room and her room, and so I went up there and I found this little can of "Trojans", and these two guys with me, they saw me find them up there, and I gave them to my mother, and I have never seen them since.

The Court: Well, what isn't clear is, was this stock of cotton in the closet, or was it only the cotton that [124] was soiled that was in the closet?

A. It was all in the closet.

The Court: All of it? A. Yes.

Q. (By Mr. Munson): Do you recall an evening, oh, sometime this year when you were home and Loretta was home and she was going to make

(Testimony of Robert Lindsey.)

a book report on a book, "Seventeen" by Booth Tarkington? Do you recall that evening?

A. Yes. I gave her the book, and she was going to make a book report on it, and I happened to be on restriction at the time. That was one of the times when I really got suspicious of what was going on, because I know I was on restriction, and he never did let me go to a show on a school night, and that night he gave me a dollar and he told me I could go to the show, and my sister was home alone with him, and I got pretty suspicious then. I wanted to know just what it was. And then there was another incident that was on New Years, last New Years, that I was home; I tried to stay home, and he sent me out, and I came back, and he sent me down to the drugstore for some film and he told me that I didn't have to come back right away, but, when I did come back from playing, the doors were locked and the blinds were pulled, and we had the Christmas tree in the house at the time, but I couldn't see any reason why he wanted to pull [125] the shades down, and he came to the door and then he gave me some money and he sent me downtown. That was when I really got suspicious.

Q. When he came to the door did you notice anything about him that was unusual?

A. Yes. I noticed his pants weren't zipped up all the way. That is one thing I did notice then, and then I kind of got suspicious and I asked my sister about it after that, and she didn't tell me anything about it.

(Testimony of Robert Lindsey.)

Q. And where did you go?

A. Me? I went down to the Federal Drug to get some film. That was last New Years.

Q. Can you recall instances of being placed on restriction and then suddenly having the restriction lifted for some reason or another by the defendant?

A. Well, I could recall that one time, but there is other times that I couldn't recall. I probably could if I thought about it a long time, but I couldn't recall them offhand though.

The Court: Well, you mean, you can recall the occasions, but you can't recall the time, or what?

A. Well, I can't recall the occasion. Maybe I could recall the occasion, but I can't recall the time because maybe there was——

The Court: You weren't asked for the time; but can [126] you recall such occasions?

A. No, I wouldn't say that I could.

Q. (By Mr. Munson): I want to get something clear, Bob. I don't know whether you said or not, but, going back to these early morning visits you testified to, when Rollie Lindsey would come upstairs and go in your room and check to see if you were asleep, did he or did he not close the door of your room? A. He did.

Q. He would close it?

A. Sometimes he wouldn't even come to my room. He would just listen on the outside, and then go to her room.

Q. Did you recognize his footfalls or footsteps?

A. Yes.

(Testimony of Robert Lindsey.)

Q. You knew how he walked?

A. Yes. Well, it couldn't have been anybody else. I didn't see him all the time, but I took it for granted that it was him, because I don't see who else it could have been.

Q. Did you, on those mornings, did you ever happen to be lying in such a way that you could look over and see Rolland Lindsey? Did you actually see him?

A. I saw him. I can recall three or four times, but there might have been more though. I would say there were three or four times because I know there were three or four times, but there could have been more times. [127]

Q. That you actually saw him? A. Yes, sir.

Q. And saw him going over to her room?

A. Yes, sir.

Mr. Munson: That is all the direct examination.

Cross Examination

Q. (By Mr. Ziegler): Robert, have you talked to anybody about this case?

A. I have talked to Mr. Munson.

Q. Anybody else? A. This guy here.

Q. Who?

Mr. Munson: You mean Mr. O'Connor?

A. The District Attorney's assistant; yes.

Q. (By Mr. Ziegler): Was it "this guy here"?

A. Yes.

Q. Robert, how many times have you run away from home while you were living there?

(Testimony of Robert Lindsey.)

A. Oh, about, maybe seven or eight times; maybe more.

Q. And what was the trouble?

A. I couldn't get along with my mother.

Q. And how did you get along with your father?

A. Fine.

Q. You ran away seven or eight times on account of you [128] couldn't get along with your mother?

A. Well, yes; I couldn't get along with her. She was always making accusations.

Q. Now, does that have anything to do with your feeling in this case?

A. No, sir; it doesn't. I still like my father and I——

Q. Notwithstanding all you have heard about him here, you still like him?

A. Yes, sir. He has done a lot for me.

Q. All right. You mean to say then—you heard your sister tell all these times when he has ravished her, didn't you?

A. Yes.

Q. And that is a pretty bad thing, isn't it?

A. Yes.

Q. And you still like him?

The Court: He just got through answering that question.

A. I told you I liked him.

Q. You have been convicted of a crime?

A. I have never been convicted of any crime.

Q. You have not?

A. No, sir.

Q. Well, are you on parole or anything of that kind?

A. No, sir. [129]

(Testimony of Robert Lindsey.)

Q. How about this case of you and the Basso boy?

Mr. Munson: I object, your Honor. He said he was not convicted of a crime.

The Court: Well, the only question you can ask him is whether he was convicted of a crime.

Q. (By Mr. Ziegler): When did you leave the house, Robert? A. When?

Q. The last time.

The Court: You mean, when he left home?

A. I left home in April. I think it was April the twenty-fourth or third.

Q. Now, when is the last time before that that you saw your father go into the bedroom?

A. I don't remember. It might have been a month; it might have been a week. I didn't keep track of them; as I told him, I forgot about them; some of them I remember.

Q. Well, could you tell the jury how many times it was in the last year before you left?

A. Maybe ten times; maybe fifteen; it might have not been that many; maybe I am exaggerating, but that is——

Q. Now, what time of the night did this occur?

A. I am not talking about night now. You were just talking about in the morning.

Q. Oh. Well, what time in the morning?

A. Oh, six or seven o'clock, before everybody was up. [130]

Q. How do you fix that time?

A. I could tell.

(Testimony of Robert Lindsey.)

Q. Well, that is what I am asking you. How do you fix it? How do you tell?

A. Well, I don't know how I can fix it; but I know that my Dad and I, whenever he was in town, we would generally go to work on the boat and we would get up at eight, and it would always be before. I figured it would be an hour or two hours before that. I couldn't say, because there wasn't a clock in my room, but I could just imagine it might have been. Maybe it was three o'clock in the morning for all I know.

Q. And it could have been seven or eight o'clock in the morning?

A. It could have been; yes.

Q. And were people up around the house at seven?

A. No, sir; they weren't.

Q. There is three young children there?

A. Yes, sir. They never did get up until—well, they always slept late.

Q. And what time did you have to get up and go to school?

A. Me?

Q. Yes.

A. I always got up about seven-thirty or eight o'clock.

Q. And Loretta too? [131]

A. Yes. But on any of these mornings that he went in her room I can only recall one instance when it was on a school day.

Q. And your recollection as to time is simply, as I understand it, is but an estimate; you guessed it was a certain time?

(Testimony of Robert Lindsey.)

A. Yes. I couldn't tell.

Q. You said you heard no talking on these occasions? A. I never heard a sound.

Q. And how far is your room from there?

A. About from here to that wall there.

Q. I see. And your room was as far from where you are sitting to this wall?

The Court: He just got through saying that. There is no use of repeating these things.

Mr. Ziegler: Well, I think it might be very important, if the Court please, and that is the reason I want to establish it definitely.

The Court: There is no use of repeating something he has just got through answering. You will never make any progress.

Q. (By Mr. Ziegler): Was your door open on these occasions, the door to your room?

A. No. I always closed the door before I went to bed.

Q. Yes. And how about when your father came in and went out? [132]

A. Well, the door was always closed; I mean, he didn't leave it open, if that is what you mean.

Q. Yes. Well, I thought you said sometimes he came and looked in through the door?

A. Well, sometimes he did just come and look in the door. That was when I didn't have a door into my room. I didn't always have a door there, because the upstairs of the house wasn't finished.

Q. You say you didn't have a door?

A. No, I didn't for a while.

(Testimony of Robert Lindsey.)

Q. When was that time, that you didn't have a door on your room?

A. Well, that was when the house was first built, and I think the house was built in 1951, because I remember we had a good season in '50, but I think it was about 1951 when I first moved upstairs.

Q. When you first what?

A. When I first moved upstairs.

Q. Before 1951 where were you sleeping then?

A. Oh, I was sleeping downstairs.

Q. All right. Now, when you first moved upstairs then—I want to get straight on this—was there a door to your room?

A. When I first moved up there?

Q. Yes. [133]

A. I told you there wasn't.

Q. All right. Now, you moved up there about 1951?

A. About that; maybe '50; I can't place the year.

Q. Well, when was the door put onto your room?

A. In about 1952; maybe '51.

Q. Now, did any of these things that you testified to happen before the door was put on your room? A. Yes. I told you they did.

Q. And he came there and looked into your room with the door open and you heard him go into Loretta's room?

A. Yes; but I told you it wasn't very many times, because he put the door on the room, and

(Testimony of Robert Lindsey.)

then he would come in; he would look in the door and then he would go to her room.

Q. Well, how did he look in the door?

A. He just looked around. I didn't see him most of the time. Part of the time I was turned over in my bed. Sometimes I would just hear him, and I would see him go in my room, and then I would hear him go down to her room, and he would stay in there, and I would fall asleep again. I didn't pay no attention to it at the time.

Q. Now, you have testified to one instance with respect to the boat down at Thomas Basin?

A. Yes.

Q. And you were sent on an errand uptown?

A. Yes.

Q. And when did you get back?

A. After I got the errand done with.

Q. And where was the boat then?

A. It was out in the harbor drifting.

Q. Drifting out in the harbor? A. Yes.

Q. And how long was it before the boat got back?

A. I don't know. I went uptown and fooled around and didn't pay no more attention to it except that night.

Q. And you don't know then how long the boat was drifting out there?

A. No, I don't. I just saw it and I figured there was something the matter and I went back into town and fooled around. I didn't come home until that night.

(Testimony of Robert Lindsey.)

Q. If you figured that there was something wrong, why didn't you report it?

A. Because I didn't think it was necessary or I would have.

Q. Well, Robert, ordinarily, have you ever seen other boats drifting out in the channel?

A. Yes.

Mr. Munson: I object, your Honor.

The Court: Objection sustained.

Q. (By Mr. Ziegler): Where was the boat when you saw it drifting, when you claim you saw it drifting? [135]

A. When I saw it drifting?

Q. Yes. A. Out here.

Q. Well, where was it with respect to——

A. It was right at the end of Pennock Island, right near the rock pile.

Q. Near—was it down toward New England?

A. No. It was this way.

Q. North, you mean? A. Yes, sir.

Q. Up near the Northern Machine Ways?

A. It was out here. I told you it was right off the end of Pennock Island. It wasn't down by Northern Machine Ways. It was right here off Pennock Island. It wasn't very far.

Q. Well, I am just trying to clear up, Robert, your recollection of where the boat was with respect to anything in town.

A. I told you it was right abeam of Pennock, at the end of Pennock Island, right by the rock pile, and there is a big rock pile right at the end of the Island.

(Testimony of Robert Lindsey.)

Q. That is the north end of the Island?

A. That is right here, down here. You can almost look straight across.

The Court: Well, we have been on that long enough. Let's go to something else. It is immaterial anyhow. [136]

Mr. Ziegler: Well, if it is immaterial, then, the Government, if the Court please, brought it out.

The Court: The exact location of this boat at that time, the precise location, or the direction of the compass are all immaterial.

Mr. Ziegler: If the Court please, I think——

The Court: Well, I have already ruled on it, and I think we are just wasting time, so you will have to go to something else.

Mr. Ziegler: Well, I would like to state to the Court my reason for wanting to fix it very definitely.

The Court: Well, I have ruled on this and that ends it.

Mr. Ziegler: I see.

The Court: We are going to be here a week if we go along at that rate.

Q. (By Mr. Ziegler): Now, Robert, you testified with respect to these rubbers?

A. Yes.

Q. Tell me about that.

A. She told me they were up in the rafters, and I went up and got them.

Q. Who told you?

A. She did; my sister.

(Testimony of Robert Lindsey.)

Q. And you got the rubbers? [137]

A. I didn't get any rubbers. I got an empty can of rubbers.

Q. An empty can of rubbers?

A. Yes, sir.

Q. And where did you find them?

A. I found them right where she told me they were, right up in the rafters.

Q. Did you tell your grandmother and Mrs. Lindsey?

A. Yes; and I gave them to Mrs. Lindsey, and I have never seen them since.

Q. Now, did you give her any rubbers?

A. No. I gave her the empty can.

Q. All right. A. I told you that.

Q. Did you tell them, Robert, that there were rubbers all over the rafters up there?

A. No, I didn't.

Q. Are you sure of that?

A. Maybe I did at the time, because I was mad, but, if I did, I didn't mean it. I can't remember what I said then.

Q. You don't remember what you said then?

A. I might have said what you just said I said, and I might not have.

Q. Now, Robert, do you remember the time, or, I will ask you, do you remember the time your father found a can of rubbers that you had up there? [138]

A. No, I don't. He never did, or else he didn't tell me about them if he did.

(Testimony of Robert Lindsey.)

Q. And then, let me ask you the question now, didn't he find in your room a can of rubbers?

A. No, he didn't.

Mr. Munson: I object to this, your Honor. I don't see where it bears on the issue.

The Court: Objection overruled.

Q. (By Mr. Ziegler): A box of rubbers?

A. He never did find any in my room. I didn't take them around with me.

Q. Well, I am asking you the question——

A. And I just told you the answer.

Q. ——you said that—as I understand it then, you are claiming now that you never had any rubbers in your room?

The Court: Well, the rubbers in his room, if any, would have to be connected with the rubbers in the rafters, otherwise his conduct is not under investigation here. In other words, you should ask him, if that is what you are driving at, whether those rubbers that he claims, or the containers for them, that he found up in the rafters were not in fact those that he had in his room, and then that would connect it up, but otherwise his conduct here with reference to rubbers is not under investigation.

Mr. Ziegler: Well, if the Court please, he hasn't [139] said there were any rubbers in the rafters. He said there was a can up there.

The Court: I mentioned container in my statement just a moment ago. That is, if you want to show that what he found up there was something he had had in his room, why, you may do so, but

(Testimony of Robert Lindsey.)

you may not show something independent of it and raise the collateral question of the conduct or behavior of this witness.

Q. (By Mr. Ziegler): Robert, when you first started living upstairs, you and your sister slept in the same room, didn't you? A. No.

Q. How is that?

A. I said, we didn't. We slept in the same room when we were downstairs.

Q. I see. When you were downstairs?

A. Yes.

Q. You slept in the same room? A. Yes.

Q. And how old were you then?

A. Oh, I guess I was eleven or ten, and my sister was eight. She got to be about twelve, and I was—maybe she was eleven and I was thirteen when we moved upstairs.

Q. And up until that time then you slept in the same room? A. Yes, sir. [140]

Q. Now, you testified, Robert, about New Years. Was that last New Year's Day? A. Yes, sir.

Q. And you stated that your father sent you to the store, the drugstore? A. Yes, sir.

Q. And what time of the night was that?

A. It was about five o'clock.

Q. Five o'clock when? In the afternoon?

A. You said night. I told you, five o'clock at night.

Q. Five o'clock in the evening. All right. Now, who was at the house when he sent you out?

(Testimony of Robert Lindsey.)

A. There was my sister, Rollie, Randy and Janice, and I guess Pat was born then.

Q. Who?

A. The little one, the smallest one. I think he is eight months. I don't know whether that would put him born in January or not. I don't remember his birthday.

Q. Well, where was your mother?

A. She took the kids and went over to my Aunt Myrtle's place.

Q. Well, then the kids weren't there?

A. Well, I thought they were there, but maybe they weren't there. Now that I remember, I think she took them and she went over to my aunt's, her sister's place.

Q. How is that? [141]

A. I think she took them and she went over to her sister's place.

Q. And what sister? What is the name of her sister? A. Myrtle.

Q. Myrtle who? A. Wiley.

Q. I see.

A. I said before that the kids were in the house, because I thought that they were, but, now that I remember, they weren't. She took them with her.

Q. And how long was she away?

A. Oh, I don't know. I couldn't say because—well, let me see—I could too. A couple hours or a couple hours and a half. That is how long I was away. She left when I did, and I didn't come back

(Testimony of Robert Lindsey.)

until she did. No. I came back before she did, come to think of it.

Q. And you were away, uptown to the drug-store, from around five to seven or seven-thirty?

A. No. I told you. I was in the house fooling around. I just come from the boat. I had come home, and he was home, and my mother had just gone out. She had taken the children with her. I was lounging around, and he told me to go out and play. I told him it was too dark. That is when I got suspicious. I told him it was too dark to go out and play. He said, "Go out and play [142] anyway." I went out and played for a half-hour. I came home, and he sent me down to the drugstore. It might have been two hours. It might have been five hours.

Q. It could have been five hours you were away then?

A. Oh, five hours—it could have been anywhere between two and five hours. I don't know. I didn't keep track of the time. I don't have a watch with me every minute.

Q. Well, then, as I understand it, you were sent down to the drugstore around five o'clock in the evening and you could have been on that mission from two to five hours? A. No.

Mr. Munson: Your Honor, I object to this harassing——

The Court: The objection is sustained as repetitious.

Q. (By Mr. Ziegler): Now, when did you have your dinner that day, New Year's Day?

(Testimony of Robert Lindsey.)

Mr. Munson: I object as immaterial, your Honor.

The Court: Objection sustained.

Q. (By Mr. Ziegler): Now, Bob, getting back to the restrictions you talked about, Mr. Munson asked you about certain restrictions. What were these restrictions for?

Mr. Munson: I object as immaterial, your Honor.

The Court: Objection sustained.

Mr. Ziegler: Counsel brought it out himself, your Honor. [143]

The Court: It doesn't make any difference. If counsel brings out something that is immaterial and you don't object to it, that doesn't give you a right to pursue it over his objection.

Q. (By Mr. Ziegler): You related something about running away, Bob. Where did you go to when you ran away?

Mr. Munson: I object as immaterial, your Honor.

The Court: Objection sustained.

Q. (By Mr. Ziegler): Robert, with respect to your testimony, you said you couldn't get along with your mother? A. Yes.

Q. And what was the reason?

A. Because she was always accusing me of things that she said I was going to do that I never did.

Q. And they were always——

A. They were always accusations, or she was always making insinuations.

The Court: Well, now, I want to call attention to the fact that this witness' conduct or behavior is not under investigation here.

(Testimony of Robert Lindsey.)

Mr. Ziegler: Well, if the Court please, can't we explore into his feeling and attitude——

The Court: Toward the defendant, but not toward his mother.

Mr. Ziegler: How is that? [144]

The Court: Toward the defendant, but not his mother.

Mr. Ziegler: I see. I think that is all, if the Court please.

Mr. Munson: No redirect, your Honor.

The Court: Call your next witness.

DONALD RAYMOND RIEWOLD

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Munson): Would you state your name please? A. Donald Raymond Riewold.

Q. Where do you live?

A. 1048 Woodland.

Q. Is that near the home of the defendant?

A. Yes. It is across the street about two doors down.

Q. How long have you been in Ketchikan, Mr. Riewold? A. Two and a half years.

Q. Two and a half?

A. Two and a half years.

Q. Are you acquainted with the defendant?

A. I have met him; I mean, I met him two or three times, I believe; maybe three or four.

(Testimony of Donald Raymond Riewold.)

Q. Do you know the complaining witness—Loretta?
A. Yes, I do; very well. [145]

Q. How do you know her?

A. I know her as she used to baby-sit for us.

Q. Do you recall a conversation that you had with Loretta some months ago?

A. Yes, sir; I presume it is the one bearing on this case.

Q. Yes. You made a statement to the United States Marshal?
A. Yes.

Q. Have you see it since?

A. No, I haven't.

Q. Would you like to refresh your memory?

A. Yes. As far as conversation goes, as far as dates, I may be a little balled up if you asked me, if somebody starts asking me that. It has been quite a few months.

Q. Well, suppose I tell you that the dates mentioned here are April 10th and April 13th?

A. Yes, I think so.

Q. Do you remember those?

A. Yes, I think so.

Q. Without reference to this?

A. I think so; yes.

Q. Would you tell the Court and jury, exactly as you remember it, the incidents that occurred on those dates and times?

A. Well, Loretta came over to the house and she was crying and she was quite upset and she accused—what I thought was her father; I didn't know the relationship at the [146] time—and she

(Testimony of Donald Raymond Riewold.)

accused her father of having sexual relations with her, not only that but abnormal relations with her.

Q. What do you mean by that?

A. Well, I don't know how to explain it to the Court.

Q. You mean abnormal sexual relations by means of the mouth? A. Yes.

Q. She said that she had had relations like that with the defendant?

A. She said they were forced on her, yes; and she asked me if she could call her mother, and that was the first I knew that Mrs. Lindsey or Mr. Lindsey weren't her mother and father. I had no knowledge of that whatsoever before, so I didn't know whether to believe the kid or not at the time, but she was just a kid and come over and told me that, and she asked if she could call her mother, and I said, yes, of course, and I told her to go in and use the phone. At the time I was sick in bed. I am in the Coast Guard, and I was home in bed sick, and my wife was—I don't know whether my wife was there or not, to be honest with you. In the statement it probably would say. But anyway she was in the kitchen and she didn't hear this conversation, and I told her to go ahead and call her mother, so she went ahead and called Seattle, who I thought was her mother, and, subsequently, I found out that evidently it was not her mother, and she told her about it, and then she asked me what to do, and I told her to go to the District Attorney here in Ketchikan, which I didn't know it was a Federal case; I

(Testimony of Donald Raymond Riewold.)

told her to go down and see the City Attorney.

Q. Well, do you know why she was crying that day, Mr. Riewold?

A. Yes, sir; I do. From what she told me, I do.

Mr. Ziegler: What was the answer?

A. From what she told me. I don't know, myself; no. I don't know why she was crying. I just know from what she was telling me. She was crying because she was upset because of the relationship between her and Rollie.

Q. (By Mr. Munson): Was that the only time you ever saw her crying?

A. Yes; I think, I mean, as far as I can remember; yes.

Q. Would you like to refresh your memory now from this statement?

A. Yes; if I left something out, I imagine I should. (Looking at document.)

Q. Now, I would like to ask you if you remember now what caused Loretta to cry that day?

A. Is it in the statement?

Mr. Ziegler: Just a moment, if the Court please. I think he first should be asked whether he does know what [148] caused her to cry.

Mr. Munson: I thought he just answered that.

The Court: Well, I think what you should do is—if his recollection fails him in any particular, you have a right to call his attention to the specific thing that you want to bring out, and, if he doesn't remember it then, when you call his attention to it, you can show him the record.

(Testimony of Donald Raymond Riewold.)

A. I don't know what you are trying to bring out, to be honest with you.

Mr. Ziegler: What was the answer?

A. You asked me if I knew what made her cry that particular day?

Mr. Munson: Yes.

A. Well, as I gathered, it was just the accumulation of what had been happening, and she didn't want to go back home because she was scared. I mean, I don't know the actual reason, but she was awfully, to put it bluntly, shook up, I guess you would say.

Q. Did she tell you, did she have a long talk with you and go into great detail?

A. Yes, she did.

Q. Give us an idea of what she said, will you?

Mr. Ziegler: If the Court please, I don't think that it is proper.

The Court: Well, do you object to it? [149]

Mr. Ziegler: Yes, I think we better object to it, if the Court please.

The Court: Well, I think the objection will have to be sustained. This is on—what was it—April 11th or 13th?

Mr. Munson: April 10th.

The Court: It isn't any of the dates that are alleged in these counts.

A. She gave me the dates at the time, but I don't remember them, your Honor.

Mr. Munson: I wasn't so much concerned with the *res gestae* aspect of it so much as the fact that

(Testimony of Donald Raymond Riewold.)

the defendant on cross examination of Loretta had brought out the fact that she had made prior consistent statements to various people, and I still think that the door has been opened to giving the prosecution an opportunity to tell what she told these people.

The Court: I don't think so. He has a right to ask her whether she has made statements to anybody else for the purpose of testing her credibility, but that doesn't open the gate to the reception of what she said over objection.

Mr. Munson: Your Honor, I don't think I have made myself clear yet on this point. The cross examiner yesterday in cross examining Loretta tried to indicate, either consciously or otherwise, that, when she told some of the people, including the United States Commissioner at the preliminary hearing, about the conduct of the defendant, that she had not [150] included sodomy and threw that cloud on her testimony. I believe I am entitled to have at least one or two of the eight or ten people that she talked to come up here on the stand and dispel that.

The Court: Well, I am frank to say that I don't recall the testimony on that point. You mean that she was questioned as to whether she had ever told anybody that the defendant had committed sodomy upon her?

Mr. Munson: He asked it in this way—"You didn't mention anything about sodomy then, did you?"

(Testimony of Donald Raymond Riewold.)

The Court: Well, what was her answer? Did she deny it or——

Mr. Munson: I think she said that she didn't remember whether she did or not.

Mr. Ziegler: Well, that disposes of it, I should think, your Honor.

The Court: Well, I think that the evidence would be admissible, but only the fact that she mentioned the offense of sodomy.

Q. (By Mr. Munson): Mr. Riewold, when Loretta talked to you in April, early in April, on April 10th, did she mention that Mr. Lindsey——

The Court: He has already testified to that.

Mr. Gilmore: That would be our objection. The same question was asked, and the answer was given. [151]

Mr. Munson: No further questions.

Cross Examination

Q. (By Mr. Ziegler): Mr. Riewold, all you know about is what Loretta told you? A. Yes, sir.

Q. You don't have any knowledge whatsoever of whether or not the statements she made to you were true, and you don't pretend to?

A. No, I don't pretend to, except from the reputation that the child gained from working for me for seven months. I believed her when she told me at the time.

Q. You knew nothing as to her disposition——

A. No, sir.

Q. ——for truthfulness or untruthfulness?

(Testimony of Donald Raymond Riewold.)

A. No. I have no idea of that whatsoever, sir.

Q. Have you talked to Mr. Lindsey about the case?

A. Yes, sir. I went over and—the only conversation I had with Mr. Lindsey—I called the District Attorney and told him also. I came down and asked him, and he told me that I didn't have to testify, and I went over to Mr. Lindsey and told him that I was very happy that I didn't have to get mixed up in the case and that I didn't have to testify, and, when the District Attorney called me Sunday night, I called Mr. Lindsey back and told him that I did [152] have to testify because the District Attorney called me and told me I did.

Mr. Ziegler: That is all.

Whereupon Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; and the trial proceeded as follows:

FLORENCE DALTON

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Munson:) Will you state your name please? A. Florence Dalton.

Q. Where do you live, Mrs. Dalton?

A. 639 Deermount Avenue.

Q. How long have you lived in Ketchikan?

(Testimony of Florence Dalton.)

A. All my life.

Q. Would you state your relationship to the complaining witness? A. I am her aunt.

Q. And your relationship to the defendant?

A. He is my brother-in-law.

Q. Now, do you recall making a statement last April to the United States Marshal? [153]

A. Yes.

Q. Do you recall what that was about?

A. Well, I told about how, when I was twelve years old and I was baby-sitting for——

Mr. Ziegler: Just a moment, if the Court please. I object to that. Apparently it is something with respect to the family, with respect to the defendant.

The Court: Well, I don't know what it calls for, but, apparently, it is hearsay and wouldn't be admissible.

Mr. Ziegler: When she was twelve years of age, of course, was a long while before the inception of this case.

Mr. Munson: Your Honor, I heard his objection, but I didn't get the Court's ruling.

The Court: Well, it is very difficult for the Court to rule on an objection, whatever it was, because you haven't stated the purpose of the offer, and it doesn't appear from your question.

Mr. Ziegler: I suggest, if the Court please, that he approaches the bench and tells the Court.

The Court: Well, I don't know whether it is going to be improper for him to state the purpose of the offer. He is the judge of that, in the first

(Testimony of Florence Dalton.)

instance at least. There is no use of coming to the bench if it is something that may be stated without prejudice.

Mr. Munson: Well, the question that I asked was [154] purely a preliminary question. I just wanted her to state——

The Court: Well, if it is a preliminary question, why, go ahead.

Mr. Munson: I just wanted her to state what the event was that brought about this statement to the Marshal.

A. Oh, you mean after Loretta told me about all what happened about this case?

Mr. Munson: Yes.

A. It was before Easter, a few days before Easter, she came and told me that Rollie had had these relations with her, and she said she was getting tired of it, and she said that——

Mr. Ziegler: Now, if the Court please, I object to any further testimony.

Q. (By Mr. Munson): Would you confine yourself to what she said about sodomy?

A. Oh. She told me that Rollie had——

Mr. Ziegler: I have the same objection, if the Court please.

The Court: Well, the only thing she could be permitted to state is that she made a complaint about the commission of sodomy on her, and that is all, and not the details.

Q. (By Mr. Munson): Did Loretta complain to you, mention to you, that the defendant, Rollie

(Testimony of Florence Dalton.)

Lindsey, had been having unnatural relations, sexual relations, with her? [155]

A. Yes, she did.

Q. By means of the mouth? A. Yes.

Q. Now, Mrs. Dalton, I want you to go back in your memory now and tell the jury and the Court if you recall having any experience with the defendant?

Mr. Ziegler: Now, if the Court please, we object to that as absolutely immaterial and highly prejudicial to the defendant.

Mr. Munson: Your Honor, I believe that this is admissible to show motive, pattern, intent— -

The Court: But not until after there has been, not until—evidence of this kind is admissible only on rebuttal after the defense has put in issue the matter of intent or disposition or system or anything of that kind.

Mr. Munson: May I approach the bench, your Honor?

The Court: Yes.

Whereupon respective counsel and the court reporter approached the bench, out of the hearing of the jury, and the following occurred:

Mr. Munson: Your Honor, I believe this witness' testimony can show very definitely the tie-up with the defendant in so far as his whole psychology and behavior, and also the fact that he uses certain expressions that have already been testified to on direct examination and which [156] would be clearly admissible to show his motive and pro-

(Testimony of Florence Dalton.)

propensity. I don't see that that—although we can put it in, as far as rebuttal evidence is concerned, I think it is good direct evidence, another crime, to show propensity to commit this crime.

The Court: I doubt whether it is admissible in this state of the case because right at the present time there isn't anything equivocal about the evidence so it would put the matter of intent into issue. I think you have to wait until the defendant has made it an issue.

Mr. Ziegler: It would result in an entirely new case.

The Court: That is always the case when you permit evidence of other offenses, but it is only admissible where the question of intent is put directly in issue, or system or motive, and there is nothing in the case that makes an issue of any of those things.

Mr. O'Connor: I think we can put her on as effectively in rebuttal.

The Court: If you had any authorities for the proposition in a situation such as this, you could introduce, as part of your case in chief, evidence of other offenses, you could call them to my attention.

Mr. Munson: It is immaterial when it comes in.

Whereupon respective counsel and the court reporter withdrew from the bench and were again within hearing of the jury; and the trial proceeded as follows:

Mr. Munson: No further direct examination.

Mr. Ziegler: No cross examination.

The Court: Do you have your next witness?

Mr. Munson: The next witness is a doctor, and Mr. O'Connor has just gone down to contact him again. We have been trying to reach him for the last half-hour or so, and I think he will be here.

The Court: Well, was he asked to be here at a particular time?

Mr. Munson: He was asked to be here around this time, your Honor, if he could possibly make it. Your Honor, while we are waiting for Doctor Stagg, I would like to put on Doctor Anderson as the next Government witness.

CHARLES L. ANDERSON

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Munson): Would you state your name please? A. Charles L. Anderson.

Q. And would you state your profession?

A. I am a physician.

Q. How long have you been a physician, Doctor?

A. I finished medical school in 1940.

Q. And you have been practicing medicine ever since? A. Yes, I have.

Q. Where are you practicing now?

A. Well, I am employed by the Territory of Alaska. I am Chief of the Section of Mental Health of the Alaska Department of Health, and I have my headquarters in Anchorage.

(Testimony of Charles L. Anderson.)

Q. How long have you been in Anchorage, Doctor?

The Court: Just have the Doctor state his qualifications, and then you won't have to ask him all these questions.

Q. (By Mr. Munson): Doctor, would you briefly state your qualifications as a physician and as a mental health expert and your degrees?

A. I was graduated from medicine in 1940. After a year of internship, I began a residency in psychiatry. I began that in 1941. After I completed that residency in psychiatry, I had two years in the practice of psychiatry, and in 1946 I was qualified by examination as a specialist in the field of psychiatry, and I have continuously practiced since then. I was an assistant clinical professor of psychiatry at the medical school at Ohio State University until 1952 when I came to Alaska.

Q. Your original medical degree was from Ohio State University? [159]

A. No. It was from the College of Medical Evangelists in Los Angeles.

Q. Well, Doctor, did you have occasion last April to see or talk to the complaining witness in this case, Loretta Lindsey? A. Yes, I did.

Q. And do you recall what your examination of her revealed, what she told you concerning this present case?

A. Well, that was on the 28th of April, 1954. She was sent to me.

Mr. Ziegler: I think it calls first for an answer

(Testimony of Charles L. Anderson.)

—yes or no. The question of what she told him would be another question.

The Court: I don't remember the question now.

Mr. Ziegler: The question was, "Do you recall what she told you about the case?"

A. That answer is yes.

Q. (By Mr. Munson): Would you tell the jury and the Court what she did in fact tell you?

Mr. Ziegler: Now, if the Court please, we object to that as immaterial.

The Court: Well, it is probably not immaterial, but I think it is inadmissible.

Mr. Munson: Again, your Honor, I wish to restrict the testimony to the aspect of sodomy, which—— [160]

The Court: Well, you will have to eliminate all details. The question would just simply have to call for whether there was a complaint made as to sodomy.

Q. (By Mr. Munson): At the time that you examined this girl and talked to her, did she complain or make statements indicating that her adoptive father, the defendant in this case, had had sodomous relations with her?

A. Yes, she did.

Mr. Munson: I presume that is the extent that I can go into it. I have no other questions.

The Court: Is your other witness here now?

Mr. Munson: He will be here in ten minutes, your Honor.

Mr. Ziegler: I have no questions, if the Court please.

The Court: Well, perhaps, then, we better take a recess until he arrives.

Mr. Munson: He is due at eleven-thirty, your Honor.

The Court: We will recess then subject to call when the witness arrives.

Whereupon Court recessed subject to call, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; and the trial proceeded as follows: [161]

DOCTOR LEE STAGG

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Munson:) Would you state your name please?

A. Doctor Lee Stagg.

Q. Where do you live, Doctor Stagg?

A. I live here in Ketchikan, 2619 Third Avenue.

Q. What is your profession?

A. Doctor of medicine.

Q. How long have you been practicing?

Mr. Ziegler: We will admit the Doctor is a qualified physician.

Q. (By Mr. Munson): How long have you lived in Ketchikan, Doctor? A. Sixteen years.

Q. I would like to direct your attention to a date, April 23rd of this year, and an examination that was made upon the complaining witness in this case, Loretta Lindsey, and have you tell the Court

(Testimony of Doctor Lee Stagg.)

and jury about the examination, how it was made, and what in your opinion the examination revealed about this girl.

A. All right. The girl, Loretta Lindsey, came in with her aunt, and the aunt talked to me before the examination and told me somewhat of the case and asked if I would [162] examine her and find what I could about her. The examination itself, leaving the history out, revealed the external genitalia of the girl to appear of the adult type in development. The opening, or introitus, admits two gloved fingers with ease, with no resistance from the hymenal ring whatever. The pelvic organs are normal in size, and there is no evidence of pregnant uterus. The cervix appears normal. There was no pain or resistance met with on using my large speculum to examine the vagina and the cervix. My impressions were that these findings were the same findings as in any married lady having regular relations.

Q. Doctor, you say that you used a large speculum?

A. Yes. We have three sizes of speculums. The one that we ordinarily use is a medium-sized one in the office. Occasionally in larger females we use a large speculum, and in a small virgin we use a virginoscope.

Q. Do you have those different types of speculum with you? A. Yes, I have.

Q. Would you exhibit them to the jury and ex-

(Testimony of Doctor Lee Stagg.)

plain which one you used in the examination of this girl?

A. We use this to examine the cervix and the vagina, and in a virgin the hymenal ring is the resistance usually met with, although the perineal body does come into play somewhat, but this is the small speculum used in examining [163] virgins and smaller girls. This next one is the medium-sized speculum that I use almost entirely in the office in examining the cervix and the mouth of the womb and the vagina for evidence of disease. And this speculum is the large-sized speculum. It is used in an obese person, where they are—or one having a cystocele or erectocele, where the vaginal wall folds in and it is hard to visualize the cervix, and I use that to get a little bit more exposure so that I can see what we are doing.

Q. And which one of those specula was used in the examination of this girl?

A. I used this one in the examination of the girl.

Q. And she didn't fall into this category of obesity or——

A. No. I used it because of the laxity that was present in regard to the hymenal ring and the perineal muscles.

Q. That laxity, did you just testify that that laxity would be the kind you would find in an adult married woman used to sex routine, regular sexual intercourse?

A. That is right.

Mr. Munson: No further direct examination.

(Testimony of Doctor Lee Stagg.)

Cross Examination

Q. (By Mr. Ziegler): Doctor, you don't pretend to tell the jury in your [164] testimony, as I understand it, from the condition you found as to who was responsible for that condition?

A. No.

Q. And is that condition, can that condition be caused by the use of other objects than from intercourse?

A. You ask a hard question. It is really a little bit difficult one to answer because, having seen a young lady for the first time under those conditions, the young lady is usually on quite a nervous tension and strain, and they usually fight with their knees and contract their muscles. I feel that the hymenal ring could be in that condition all right because of other objects; yes.

Q. By the use of other objects?

A. By the use of other objects. But I do not see how there could have been relaxation of the vaginal wall and of the perineal body by the use of other objects.

Q. Do I understand you then that by the use of other objects it couldn't produce this same condition?

A. I don't see how it could. I mean, I don't think I have ever seen the condition, Mr. Ziegler.

Q. Would you say positively that it couldn't?

A. I don't know as I am qualified to make a statement like that.

(Testimony of Doctor Lee Stagg.)

Q. What you have testified to now is your opinion only?

A. What I have testified to is my experience.

Q. Now, in your experience, what has it demonstrated to you with respect to young girls using artificial means of masturbation or intercourse?

A. Using artificial means of masturbation——

The Court: Well, what is this now? I think it is getting pretty remote, what his opinion might be with other girls, unless it throws light directly on the condition of the prosecuting witness here. It is too broad.

Q. (By Mr. Ziegler): Well, what I am trying to develop, Doctor, if it is true, whether this condition you found is due, that is, positively due, to an actual intercourse, if you know?

A. I can only give my impression.

Q. And whatever you say with respect to it then is an impression?

A. Based on the experience that I have had with married women in the office and those who are not married that come up for examination.

Mr. Ziegler: I think that is all.

Redirect Examination

Q. (By Mr. Munson): Doctor Stagg, I just want to ask you one thing. You have already testified to it, but, apparently, either the defense counsel didn't hear you or else he misunderstood [166] you. Did you say that, in the event of artificial stimulus or a stimulus of the area around the vagina

(Testimony of Doctor Lee Stagg.)

by other than, or by artificial means, would result in relaxation of the hymenal ring but would not cause this condition that you observed in the vaginal wall itself; in other words, masturbation wouldn't produce that effect?

A. That is the conclusion I would draw; but it is possible to stretch the hymenal ring and cause relaxation of that particular portion, according to the size of the object, all right, but other relaxation I have only seen in married women.

Q. That has been your experience as a doctor and your opinion as an expert, that that would be the effect?

A. Well, of course, I wouldn't qualify, try to qualify as an expert.

Q. We have just qualified you as an expert, Doctor.

A. I see. Well, that would be my experience.

Mr. Munson: Thank you.

Recross Examination

Q. (By Mr. Ziegler): And that would be your opinion? A. Yes.

Q. Are you prepared to say definitely then, Doctor, that by the use of other objects other than from intercourse, [167] similar in size and other qualities, the same condition would result?

The Court: Well, he has already answered it a half a dozen times now. It is about time we got through.

(Testimony of Doctor Lee Stagg.)

Mr. Ziegler: Well, if the Court feels that he has answered it.

The Court: Why, certainly. He just got through answering the District Attorney for about the third or fourth time.

Mr. Ziegler: I don't recall what his answer was. That is my purpose in asking the question.

Mr. Munson: I object to any further questions along this line.

The Court: Well, I have already called attention to the fact that it is pure repetition now.

Mr. Ziegler: No further cross.

Mr. Munson: That is all, Doctor.

(Witness excused.)

Mr. Munson: The Government rests, your Honor.

The Court: Are you ready to go on with the defense?

Mr. Gilmore: Yes, we are, your Honor. Do you wish us to start now?

The Court: Have you a short witness?

Mr. Gilmore: No. We certainly couldn't get through by twelve. [168]

The Court: Well, perhaps you better start. I don't want to have this jury out over Thanksgiving Day, if it is possible to avoid it.

Defendant's Case

MRS. LYDIA PAWSEY

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Gilmore): Will you state your name please?

A. Mrs. Lydia Pawsey.

Q. Mrs. Pawsey, will you try to speak loud enough so the jurors even in the end chairs may hear you? Speak up. And where do you live?

A. I live with the Lindseys right now.

Q. Here in Ketchikan? A. Yes.

Q. And is Mr. and Mrs. Lindsey related to you, or are they? A. Mrs. Lindsey is my daughter.

Q. Now, how long have you lived here?

A. It must be over forty years. I lived over here since I got married.

Q. Over forty years. Now, you of course know Loretta Lindsey?

A. She is my granddaughter. [169]

Q. Do you know about how long she has been in the Lindsey home?

A. I don't remember how long. She was quite small though when she was adopted to the Lindseys.

Q. But you have known her ever since the Lindseys adopted her; is that correct? A. Yes.

Q. And of course you saw her frequently, did you?

(Testimony of Mrs. Lydia Pawsey.)

A. Yes, sir. We had dinners up to their place once in a while on holidays.

Q. And would she come to you and visit in your home too?

A. Sometimes she does; if she is sent for something, why, she would come down to the house.

Q. Now, calling your attention to April of this year, April, 1954, sometime shortly before Easter time, do you recall Loretta coming to your house that day? A. Yes.

Q. And do you recall that she made a complaint to you that day, or a conversation that she had with you that day?

Mr. Munson: I object, your Honor. This is eliciting hearsay testimony.

Mr. Gilmore: It isn't the subject matter of the conversation, your Honor. It is just the transaction and the event without a recitation.

The Court: Well, if it is just merely going to the [170] fact of whether or not there was a conversation, why, she may be asked about it, but the conversation itself over the objection could not be related.

Mr. Gilmore: No.

Q. (By Mr. Gilmore): We don't want what she told you but whether or not she came to your home and had a conversation with you that day.

A. It must be—I am not quite sure though—it must be after five o'clock. We were just getting through having our supper, and her mother called up before that to find out if she was down at the

(Testimony of Mrs. Lydia Pawsey.)

house, and I said, "No." I don't remember whether I answered myself.

Q. Don't say the words that were spoken. You are just telling us that she came there and did have a conversation? A. Yes.

Q. Now, following her coming to your home that day, what did you do, or what did you and Loretta do, and where did you go?

A. As soon as she come in the house, I told her, I said, "Your mother called." She said, "I am not going home." I said, "What is the trouble now?"

Mr. Munson: Well, that is eliciting hearsay again.

The Court: Over the objection——

Q. (By Mr. Gilmore): I asked you first what you did after she came to your home, and where did you go following that? [171]

A. Well, I will have to tell you what we said before we go some place, don't I? You can't just go.

Q. You can't repeat the conversation, the words that were spoken back and forth, Mrs. Pawsey, but you can tell the jury what you did after she came to you and had a conversation there. That is what I want you to tell the jury now, what you did after Loretta came there, as you have just testified.

A. I told her, I said——

The Court: But you are not allowed to say what you said or she said but only what you did. The question is, what did you do after that?

A. Well, I will have to talk to her before we go some place. You can't just leave.

(Testimony of Mrs. Lydia Pawsey.)

The Court: No. You can't tell here over objection what you talked about. You can just leave that out and tell your attorney what you did after that.

Q. (By Mr. Gilmore): That can be inferred, Mrs. Pawsey. The jury can assume that you had a talk if you tell us, after she came there and had the talk, then what you did and where you went.

A. We went up to her mother's place.

Q. All right. Now, did she make any kind of a report to you about her father?

A. That is why I was trying to tell you before. We are [172] going backwards now.

Q. Yes; but my question is a little different. I just want to know whether she made a report to you about her father without you saying what she said.

The Court: Do you see? You answer that question yes or no.

A. I told her, I said——

The Court: You can't tell what you told her or what she told you, but you can merely say whether she made a report or a complaint about her father. You can answer that yes or no. A. Yes.

Q. (By Mr. Gilmore): Had she told it to anybody else before this?

Mr. Munson: I object, your Honor, as calling for something this witness couldn't know.

The Court: Well, unless she knows, she wouldn't be able to answer it of course. If she knows, she may answer it.

(Testimony of Mrs. Lydia Pawsey.)

Q. (By Mr. Gilmore): But, if you know, had she ever told anybody about this before?

A. I asked her, and she said she told it to her girl friend and the Riewolds.

Q. But before that had she? That was that same day, was it not? A. That same evening. [173]

Q. But how about whether she had told it to anybody before that——

Mr. Munson: Your Honor, I object to the form of the question.

Q. (By Mr. Gilmore): ——if you know?

Mr. Munson: Well, I think he cured it—if you know. I think he should say—do you know whether——

The Court: Well, but she has answered the last question in a way that certainly plainly indicates she doesn't know, except from what Loretta told her, and that is not personal knowledge. In other words, you ask her if she knows, and she relates a conversation that she had that would be hearsay and not personal knowledge.

Mr. Gilmore: Well, I am not convinced, your Honor, that she——

The Court: For instance, if she heard Loretta tell somebody else, then she had personal knowledge, but, unless she did that, she has no personal knowledge.

Mr. Gilmore: Or unless she had personal knowledge——

Q. (By Mr. Gilmore): What I want to know is whether or not you have personal knowledge as

(Testimony of Mrs. Lydia Pawsey.)

to whether she ever told anybody about this before, that is, what she told you about what her father had done?

The Court: Every time you ask her that, then she starts in over the objection to relate what was said. [174]

Mr. Gilmore: Well, I know it, your Honor, and I am doing my very best, but there is a difficulty in eliciting, of course, abiding by the rules of evidence with this witness, and I think, if the Court will indulge it, we can relax just a little bit.

The Court: Well, the only reason I mentioned it is so that you would be careful how you bring your answer out or we get into this argument all the time.

Q. (By Mr. Gilmore): Well, yes, I know, and I will be as strict and careful as I know how.

Q. (By Mr. Gilmore): What I want to know is, do you know, prior to that day when she told you about this complaint about her father, had she ever before that day ever mentioned it or told it to you? A. No.

Mr. Munson: Does that mean that you don't know?

A. Well, not before that day she come down to the house.

Mr. Munson: I still don't know whether——

Mr. Gilmore: Well, I will make it clear.

Q. (By Mr. Gilmore): Now, counsel has raised the question as to whether you understood my ques-

(Testimony of Mrs. Lydia Pawsey.)

tion. Do you know whether she ever told anybody about this before that day? A. No.

Q. She never did?

Mr. Munson: No. She answered that she doesn't know [175] whether she ever did.

Q. (By Mr. Gilmore): Do you know whether she ever told anybody about this before that day; do you know?

A. Not until that evening she came down to the house.

Q. That is the first time she ever told about this, and you know that?

Mr. Munson: Your Honor, I don't wish to heckle the counsel here, but the witness has merely testified that she doesn't know whether a complaint was made or——

The Court: Well, that would be the way that you would ordinarily take it, but maybe she has difficulty with the English language. But what is wrong with the answer is this, that she said, she indicated by her answer that she knows nothing about what Loretta Lindsey might have said before to anybody else, and then she says that not before that night did she tell anybody, so that it is obvious that she couldn't know what Loretta Lindsey did before from her own answer.

Mr. Gilmore: Well, I thought that would be something the jury could conclude from because of her close association with Loretta over the years.

The Court: Yes; but, when you asked whether she knew whether Loretta ever made a complaint

(Testimony of Mrs. Lydia Pawsey.)

of that kind before, that assumes to somebody else.

Mr. Gilmore: I know, your Honor; but I didn't say, [176] did she make a complaint, whether she knew of her own personal knowledge, and of course it would be based on her close association with Loretta. See, that is what I am trying to get. Assuming that she knows, she would either know or she wouldn't know of her own knowledge whether she ever made any complaint before.

The Court: Yes; but, when she answers that Loretta Lindsey never made any complaint before, then the question arises, how does she know that? Was she with her every minute of the time?

Mr. Gilmore; No; but just because of her close association with Loretta.

The Court: You mean, because she didn't make it to her, why, she assumes that Loretta never made it to anybody else.

Mr. Gilmore: That could be one way she would know.

The Court: Well, so long as it is clear before the jury what she means.

Mr. Munson: Well, I presume now that what the question means is, did Loretta ever make a complaint before to this witness.

Mr. Gilmore: The witness has testified and said that she never made such a complaint before.

Mr. Munson: To her.

Mr. Gilmore: No; she didn't testify to that.

Mr. Munson: The Judge just ruled that she

(Testimony of Mrs. Lydia Pawsey.)

couldn't possibly have testified as to whether Loretta made complaints to anyone else or not.

The Court: The jury of course is entitled to have any difficulty of this kind clarified, and it is obvious of course without any argument that, unless she was with Loretta every minute of the day, all the time, she wouldn't know what Loretta might have told or didn't tell somebody else.

Q. (By Mr. Gilmore): All right, now, Mrs. Pawsey, where did you go from your house after Loretta came up there that day?

A. We went up to her mother's place.

Q. To Mrs. Lindsey's? A. Mrs. Lindsey's; yes.

Q. And you say that was about what time of the day, if you remember?

A. I don't know exactly the time. It must be after seven o'clock. I am not quite sure.

Q. And who was at the Lindsey home when you got there?

A. There was Bobby and the two boys that were staying with them and Mrs. Lindsey, and that was all that was there.

Whereupon Court recessed until 2:00 o'clock p.m., November 23, 1954, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; the witness Mrs. Lydia Pawsey resumed the witness stand, and the Direct Examination by Mr. Gilmore was continued as follows:

Q. Mrs. Pawsey, I think you were telling the jury about who was present down at the Lindsey house, just before we concluded at noontime, so will

(Testimony of Mrs. Lydia Pawsey.)

you tell us that again? Who was present down at the Lindsey house when you went down there?

A. There was Bobby and the two boys that were staying at the Lindseys' and Loretta and Gary and Mrs. Lindsey.

Q. All right. Will you just go ahead and explain now what took place down there please?

A. That is the time when Loretta was telling her mother what happened, you know, between her and Lindsey.

Q. And she made a charge down there, the same thing that she told you, in substance, that her father had been bothering her?

A. The same story.

Q. Now, had her mother ever heard that story before, if you know?

A. No. That was the first time.

Q. And it came as a distinct shock and surprise to all concerned, to everybody there; is that right?

A. Yes.

Q. Now, where did Loretta stay following that day?

A. I took her home with me.

Q. And did she continue to stay with you at your house? [179]

A. Just a few days, until Miss Seliotes——

Q. Who is Miss Seliotes?

A. The Welfare worker.

Q. And what about her; what were you going to say?

A. I told 'Retta that afternoon to be sure and come right home after school because I am going to send you down to Jimmy's to get some grocer-

(Testimony of Mrs. Lydia Pawsey.)

ies, and she didn't come home, so I went and looked for her, and——

The Court: Just have her eliminate these details in answering the question.

Mr. Gilmore: Yes.

Q. (By Mrs. Gilmore): Mrs. Pawsey, why was it, just tell the jury, why was it that Loretta discontinued staying at your home with you, or why she did not come home from school, if you know?

A. I think it was the day she reported about it to the District Attorney.

Q. Well, was she told, or did you say that she was told by Miss Seliotes that she was not to come to your house?

A. I am not sure. I think she called up my other daughter, that she could stay with her that night until she could find a place for her the next day.

Mr. Munson: Your Honor, I object to any further going into this collateral issue.

The Court: I don't see how it has any relevancy.

Q. (By Mr. Gilmore): Now, Mrs. Pawsey, when is the next time that you saw Loretta after this time that you are testifying about?

A. On a Sunday afternoon.

Q. And when was that with reference to the time that she was staying with you at your home?

Mr. Munson: Objected to as immaterial, your Honor.

The Court: Objection sustained.

Q. (By Mr. Gilmore): Well, now, I don't quite follow you, and I am sure the jury doesn't, as to

(Testimony of Mrs. Lydia Pawsey.)

when was the next time you saw Loretta following her not staying at your home any more.

Mr. Munson: Same objection, your Honor.

The Court: It will be permitted only as a preliminary question.

Mr. Gilmore: Yes; it is preliminary, your Honor.

Q. (By Mr. Gilmore): Do you remember the next time that you saw Loretta and, where it was?

A. Yes. It was in our house.

Q. And when was that with reference to the time that she wasn't staying with you any more?

A. I think that was the day that she reported about it to the District Attorney.

Q. Now, did Loretta leave Ketchikan sometime after that? A. She went to Wrangell. [181]

Q. Do you remember about the time she went to Wrangell?

A. No; I didn't know nothing about it.

Mr. Munson: Your Honor, I ask that that testimony that she just gave be stricken on the ground that it is hearsay, and she says she doesn't know when it was, and I doubt if she knows from her own personal knowledge where she went.

The Court: Well, she didn't give any hearsay testimony. She said she didn't know anything about it.

Q. (By Mr. Gilmore): But you do know that she went to Wrangell; is that correct?

A. Later on I found out that she was in Wrangell.

Q. Now, did you see her on her return from Wrangell? A. I did.

(Testimony of Mrs. Lydia Pawsey.)

Q. And when was that?

A. It was—I don't remember the date though—it was in the afternoon at the Lindsey home.

Q. Would that have been in August?

A. Somewhere around there.

Q. And you were at the Lindsey home?

A. Yes.

Q. What time of the day was it, if you recall?

A. In the afternoon.

Q. And who else was at the Lindsey home?

A. Mrs. Lindsey and Mr. Lindsey.

Q. And what took place when Loretta came to the Lindsey home [182] that day?

A. Well, she was telling me that she dropped the case. She said she dropped the case and that is why she come down here.

Q. And what else did she say?

Mr. Munson: I object, your Honor.

The Court: Objection sustained. There has been no foundation laid for any such conversation.

Q. (By Mr. Gilmore): Well, now, you testified that present were Mrs. Lindsey and Mr. Lindsey and yourself; is that correct?

A. Yes; that is the three of us.

Q. And Mr. Lindsey was there? A. Yes.

Mr. Gilmore: Now, your Honor, I think she is permitted or should be permitted——

The Court: I have pointed out to counsel here for weeks, not you necessarily, but a lot of others, that you cannot impeach a witness by asking a question of the impeaching witness that was never asked

(Testimony of Mrs. Lydia Pawsey.)
of the witness sought to be impeached. Now, that ought to be plain enough. So, the objection is sustained.

Q. (By Mr. Gilmore): Now, at that time—I will ask you this—when she said about her dropping the charges——

Mr. Munson: I object to his bringing out that [183] hearsay, your Honor.

The Court: Any conversation is included within the ruling of the Court.

Mr. Gilmore: Including a specific question, your Honor?

The Court: Yes, certainly, unless the question were asked of the witness Loretta Lindsey when she was on the stand.

Q (By Mr. Gilmore): Now, was there any conversation by Loretta concerning any charges in Wrangell?

Mr. Munson: I object. There was no impeachment foundation laid for that question, your Honor.

Mr. Gilmore: Well, there was testimony about it, your Honor, in Loretta's testimony.

The Court: I don't know how you can add to it by merely bringing out from this witness that such was stated. She herself has admitted it.

Mr. Gilmore: Except that there could be a variance, and it wouldn't have to be exactly the way the witness——

The Court: There would have to be a foundation laid for it if you want to show a variance.

Q. (By Mr. Gilmore): Now, did Loretta con-

(Testimony of Mrs. Lydia Pawsey.)

fess that she had lied in making the charge, the original charge, about her father?

Mr. Munson: I object to this for the same reason, your Honor. [184]

The Court: The same ruling.

Q. (By Mr. Gilmore): Mrs. Pawsey, at this same time and place, I will ask you whether or not Bob came in, was there or came in, and said that, yes, that could be, concerning the charges, because there is rubbers all over the rafters upstairs?

Mr. Munson: I object on the ground that no——

The Court: Objection sustained. There was no foundation laid for it.

Mr. Gilmore: Well, but it is preliminary, if the Court please.

The Court: Well, you better pick out something else that is preliminary and not something that is that material.

Q. (By Mr. Gilmore): Now, Mrs. Pawsey, did you or any other members of your family after that time, sometime later, make a search or an inspection of the upstairs rooms with a view of finding any evidence to support the charges that Loretta made against her dad?

A. I don't know.

Q. Did you inspect the upstairs?

A. I didn't. I didn't go upstairs at all.

Q. I see. Do you know whether or not Bob did?

A. I don't know if he did.

Q. I see. Did Pat, your son? A. Yes.

Q. And did you go with him? A. No.

(Testimony of Mrs. Lydia Pawsey.)

Q. But you know that Pat did make an inspection of the upstairs?

A. No, I don't know that because——

Mr. Munson: I move that her testimony on that be stricken, your Honor. She doesn't know.

The Court: Well, it is harmless if she doesn't know. There is no use of striking it.

Mr. Gilmore: Well, if the Court please, just like the difficulty we were having before lunchtime, I think that your Honor will agree with me that because of the difficulty of this witness in understanding some of my questions that you should grant a little indulgence, or at least I ask your indulgence in that regard. I state that now in view of the fact that I feel the witness is a little mixed up, and I would like leave of the Court to ask at the sake of repetition the same question again, just once again.

The Court: Well, I don't see how she could be mistaken about the question. She seems to have a pretty good command of English and she has answered your question. I think, about three times, but, if you think that she is mistaken, you may ask her the question again.

Mr. Gilmore: Thank you, your Honor.

Q. (By Mr. Gilmore): Now, Mrs. Pawsey, I will ask you [186] whether or not you know whether your son Pat made an inspection of the upstairs, of that room, with a view of finding evidence of the charges made against Rollie?

(Testimony of Mrs. Lydia Pawsey.)

Mr. Munson: I object to that question, your Honor.

Mr. Gilmore: If she knows.

Mr. Munson: I object on the ground that it would be immaterial if an inspection was made for evidence or not.

The Court: Well, has there been any testimony heretofore about an inspection of this kind? I don't remember it.

Mr. Gilmore: Well, there has been——

Mr. Ziegler: There has been none yet, your Honor.

Mr. Gilmore: None yet, but there will be. We make that offer to the Court now.

Mr. Munson: I object.

The Court: Well, then, it would seem immaterial whether an inspection was made, but it would be material if anything was found.

Mr. Munson: That is not the question, your Honor.

Mr. Ziegler: It is preliminary.

Mr. Munson: I also object that the counsel is trying to elicit testimony from this witness which should be testified to by someone else. In fact several of the questions have been objected to on the ground that this is not the proper witness.

The Court: Well, of course, one witness can state [187] matters within her knowledge that some later witness will testify. There is no legal objection to that.

Mr. Ziegler: I think—pardon me, Mr. Gilmore

(Testimony of Mrs. Lydia Pawsey.)

—I might have some doubt that she understands the word “inspection”, and I think, if the question were framed differently, she would know, and that is to this effect, your Honor—did she in company with any other person go up in that room and look to see whether there was any evidence there supporting this crime, this alleged crime. I think she would probably understand that question.

The Court: Well, that may be, but I am wondering what the foundation is for this question. For instance, has anybody testified that there was a search of this kind made or that there was anything up there?

Mr. Gilmore: Well——

The Court: For instance, it is like asking her—did you go down to such and such a grocery; she might have gone down there; so what?

Mr. Gilmore: Well, before we could ask her her findings, your Honor—I know what your Honor is getting at—I would ask her that, and this is preliminary to the results of her findings, and I am certain that she is mistaken in not being able to recall that she did go up and look around in the room for evidence in support of the charge made against Rollie. [188]

Q. (By Mr. Gilmore): Now, Mrs. Pawsey, I ask you whether or not you remember if you went upstairs in the Lindsey home with Pat, your son Pat, or anyone else and looked around upstairs——

Mr. Ziegler: With a flashlight.

Q. (By Mr. Gilmore): ——with flashlights or

(Testimony of Mrs. Lydia Pawsey.)

with lights on or anything, looked around upstairs for evidence in support of the charge that Loretta made against Rollie?

A. I think Bobby did. They told me that, and the two boys. They were looking up there, but I didn't go upstairs that same evening.

Mr. Munson: Your Honor, I move that that be stricken as hearsay.

The Court: Well, it is harmless, so there is no necessity for striking it.

Q. (By Mr. Gilmore): Are you aware or do you know whether or not Mr. Lindsey and Mrs. Lindsey have had considerable difficulty in raising Loretta?

Mr. Munson: I object to that as immaterial, your Honor.

The Court: Objection sustained.

Mr. Gilmore: You may take the witness. [189]

Cross Examination

Q. (By Mr. Munson): Mrs. Pawsey, do you recall what day it was that Loretta told you about what Mr. Lindsey was doing to her?

A. I know it was sometime before Easter, a few days before Easter.

Q. A few days before Easter?

A. But I don't know the exact date though.

Q. Was it that same day that you took Loretta down to your house to live with you?

A. Yes; that same evening.

(Testimony of Mrs. Lydia Pawsey.)

Q. The evening of that same day you took her to live with you? A. Yes.

Q. Did you hear earlier today, did you hear Bob, Robert Lindsey, testify that you and he went up to Loretta's room and in her closet and found these cotton balls?

A. No; I didn't go up that evening.

Q. No. Did you go up with Bob?

A. No, I didn't. He went up with Gary, I think, and the two boys. There is four of them went up there. That is when he brought that little can down. I don't know what it is all about.

Q. A little "Trojan" can?

A. A little square can. And he put it right alongside of [190] Mrs. Lindsey, and that is the evidence, he said.

Q. That was the evidence?

A. That is what he said.

Q. Did you look in that can?

A. I didn't.

Q. You didn't pay any attention to it?

A. No.

Q. Did you hear Bob say that it was a "Trojan" can, an empty "Trojan" can?

A. I don't even remember what the name of the can was.

Q. Did you know what it was for?

A. No.

Q. You didn't pay much attention to it?

A. No.

Q. Well, Mrs. Pawsey, when Loretta first told

(Testimony of Mrs. Lydia Pawsey.)

you about these charges that were made or about these acts that Rolland Lindsey had done to her, did you tell her to "Keep quite about it and don't get the family in trouble"?

A. I didn't say it that way. If you want me to repeat what I said, I will do it.

Q. Fine.

A. Well, I told Loretta, "Loretta", I said—Rollie was out at that time, and I couldn't make it out why Rollie was doing this to her, because Rollie was out. He was out logging. So I asked her, "When did this happen?" And [191] she said when she was a little girl. It had been going on for a long time, she said. I said, "Why didn't you tell somebody? Why didn't you tell your mother about it?" "Because I know nobody would believe me," she said. So, "You take your father up there," I said, "and we will try to straighten it out between ourselves. Maybe we call Father Hodgkins," I said.

Q. You didn't want to bring this disgrace on your family, did you?

A. No. "We will try to straighten it ourselves. If we can't do it, then take it to court," I said.

Q. I see. And of course that same day you brought her to your house to stay with you?

A. Yes.

Q. Were you there in the Lindsey house when Loretta and Victoria were there, and Rollie was there, and you were there, and you were talking about this case, and Loretta mentioned that she had been examined by a physician and the physi-

(Testimony of Mrs. Lydia Pawsey.)

cian knew that she wasn't a virgin, that she had had intercourse?

A. I didn't hear about that. I didn't even know that she went to the doctor.

Q. You didn't know that? A. No.

Q. You didn't hear her mention that? [192]

A. No. I didn't hear it until today.

Q. Today was the first time you knew about the medical examination?

A. About the doctor.

Q. Well, did you hear Rollie tell Loretta that, if she were asked about it, to tell them that she stuck a banana up her? A. No.

Q. You don't recall that?

A. No. I wasn't there.

Q. Mrs. Pawsey, after you had your talk with Loretta, and you wanted to prevent this case from getting into court, and all this——

A. Yes; because I told her, "It is a dirty case," I said, "Loretta, when you get on the stand, you are going to drink your tears," I said, "so, just wait," I said.

Q. Why did you take her out of the Lindsey home that day?

A. To take her home with me that day, because she was planning to go south. I said, "Where do you think you are going?" She said, "I am going south," she said. I said, "I have got something to say about this, 'Retta,'" I said, "I am your grandmother; so you are going to stay with us."

(Testimony of Mrs. Lydia Pawsey.)

Q. And you took her away from the Lindsey home?

A. That is why I took her home. I said, "You are not going south," because the one she calls "Mother" down south is [193] no relative of hers at all; just adopted.

Q. Adopted mother? A. Yes.

Q. So you took her to your house to protect her; is that it? A. So she won't go south.

Q. So she won't run away, won't leave?

A. Not to run away, but I don't want her to go south.

Q. You didn't want her to go with those people?

A. No, because——

Q. You didn't want her to stay with Rollie?

A. "If she was your real mother," I said, "I would help you," I said, "to go to her. She is no relative of yours."

Q. So you took her into your home?

A. So I took her home.

Q. Well, you feel pretty strongly about your family, don't you?

A. Yes, I do. I love every one of them.

Q. And you want to see your family kept together? A. I do.

Q. And that is why you didn't want Loretta to go down below? A. Yes.

Q. And you wanted to keep her here?

A. Yes.

Q. And you wanted her to just forget about these things that happened to her for the sake of

(Testimony of Mrs. Lydia Pawsey.)

the family; is that the [194] way you felt about it?

A. Yes.

Q. And you felt that way right along?

A. Yes.

Q. That it was better for Loretta to just more or less forget about it and not bring it to court and keep the family name intact, pure; is that right?

A. I told her, "It is a dirty case, Loretta. It is not nice," I said, "to be out in front of the people." I said, "to be on the witness stand."

Redirect Examination

Q. (By Mr. Gilmore): Well, now, Mrs. Pawsey, when you said inasmuch as Loretta made the charge when Rollie was out of town, out logging, didn't you say, "Let's wait until Rollie comes in and see if we can get this straightened out"? Isn't that what you said? A. I did.

Mr. Munson: I object to that as leading, your Honor.

The Court: Yes; it is leading, but it has been answered.

Q. (By Mr. Gilmore): Now, you wanted just to get at the bottom of this, didn't you?

Mr. Munson: I object as leading, your Honor.

The Court: Objection sustained.

Q. (By Mr. Gilmore): Well, what was your purpose, you tell the jury, why you wanted to wait until Rollie came in and find out about this?

A. To find out if it is the truth or not the truth.

(Testimony of Mrs. Lydia Pawsey.)

Q. All right. That is all you wanted to do, wasn't it?

A. That is right. I wanted to find out; yes.

Q. Did you have an idea that maybe Loretta was lying about this charge?

A. It is hard to say that.

Q. Yes.

A. That is why I wanted to straighten it out and find out the truth or if it is not the truth.

Q. That is all you had in mind?

A. That is all.

Q. And you weren't trying or didn't want to suppress the charges and not bring them into court?

Mr. Munson: I object as leading, your Honor.

The Court: Objection sustained. She is your witness. You can't lead her that way.

Mr. Gilmore: Well, I thought there was a rule that permitted a difficult witness to be led, your Honor.

The Court: She is not difficult. She hasn't shown the slightest inclination to be reluctant.

Q. (By Mr. Gilmore): Now, Mrs. Pawsey, you testified that [196] when you went over to the house and Loretta made the charge against her father, against Rollie, that he went upstairs and came down with something?

A. Who—Rollie?

Q. No. Bob.

A. Oh. I don't know. Oh, that little can?

Q. Yes. A. Yes.

Q. And who was present then when he came down with that little can?

(Testimony of Mrs. Lydia Pawsey.)

A. It was Gary and Robert and Loretta, but the two boys were in the kitchen.

Q. Was Mrs. Lindsey present?

A. Well, he put that little can right alongside Mrs. Lindsey on the armchair.

Q. And you were right there?

A. I was right there.

Q. And what did he say when he put that can down?

Mr. Munson: I object, your Honor.

A. "This is the evidence," or something like that.

The Court: On the ground that it is hearsay? I think it has already been testified to anyway.

Q. (By Mr. Gilmore): Now, is that the little can that Bob put down and said, "Here is the evidence"? A. Something like that. [197]

Q. Similar to that?

A. I didn't look close enough at that. I was crying too much, so I didn't look at the can so much.

Q. And you don't know where Bob got this, do you? A. No, I don't.

Q. But he went upstairs, where his room is, before he produced it?

A. Yes; they went upstairs first and brought that down and showed Victoria the evidence.

Q. Was this the only thing that he came downstairs with? A. That is all.

Q. And he put that down on the chair alongside of his mother——

The Court: Well, now, you have gone over that

(Testimony of Mrs. Lydia Pawsey.)

about three times. I am trying to make some progress in this case.

Mr. O'Connor: May we see the can? Is this supposed to be the same one he brought down?

Mr. Gilmore: The same or similar.

Mr. Ziegler: As I understand it, that is the can that was brought down; yes.

Mr. Gilmore: We are not offering it as an exhibit at this time. We have another witness that will do that.

Q. (By Mr. Gilmore): Did he open it, or did he display it, or——

A. No; he didn't open it. [198]

Mr. Gilmore: No further questions.

Mr. Munson: No further questions.

The Court: That is all, Mrs. Pawsey.

(Witness excused.)

PAT PAWSEY

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Gilmore): Will you state your name please? A. Pat Pawsey.

Q. You live here in Ketchikan, do you?

A. Yes.

Q. And that was your mother that just testified on the stand, was it? A. Yes.

(Testimony of Pat Pawsey.)

Q. You were born here in Ketchikan?

A. Yes.

Q. Are you related to the defendant in this case, Rollie Lindsey? A. Pardon?

Q. Are you related to the defendant, Rollie Lindsey? A. Brother-in-law.

Q. Brother-in-law. Mrs. Lindsey is your sister?

A. Yes. [199]

Q. And you are likewise related to Mrs. Dalton, Florence Dalton, who testified in this case?

A. My sister.

Q. And of course you know Loretta?

A. Yes.

Q. And of course she is related to you, is she?

A. Yes.

Q. Now, Pat, calling your attention to sometime in the spring of this year, 1954, I will ask you to tell the jury whether or not Loretta Lindsey came over to your home—you live with your mother, do you not? A. Yes.

Q. Do you remember whether Loretta came to your home? The Pawsey home?

A. Yes, she did.

Q. Do you remember about when it was?

A. Pretty close to Easter, I believe.

Q. All right. And what did she report that day when she came to your home, as you recall it?

A. She told Mom and I, that Rollie tried to rape her three times, when she came in the house.

Q. She said that Rollie had tried to rape her three times? A. Yes.

(Testimony of Pat Pawsey.)

Q. Did she make any kind of a charge?

The Court: He has already answered that. Was this [200] question ever asked of Loretta Lindsey? If not, the whole thing is stricken and the jury instructed to disregard it. There has got to be a foundation laid before you attempt to impeach a witness that has testified and left the stand.

Q. (By Mr. Gilmore): Now, Pat, sometime following that did you go to the Lindsey home?

A. I went up there with my mother.

Q. All right. And when you went there did you make a search of the upstairs part of that room, of that house, for evidence in support of the charges made against Rollie?

A. Yes. My mother and I both went up.

Mr. Munson: I object, your Honor. They are impeaching their own witness now. The grandmother said——

Mr. Gilmore: Oh, no, we are not. I sincerely submitted to the Court that I thought——

The Court: Why don't you give the Court a chance to rule. There is no bar against developing inconsistencies between the witnesses' testimony.

Mr. Gilmore: No.

Q. (By Mr. Gilmore): What did you go upstairs to search for, Pat?

A. There is supposed to have been rubbers up there or something like that.

Q. And did you go up and make a search of the upstairs? A. Yes, we did. [201]

Q. In Loretta's room? A. Yes.

(Testimony of Pat Pawsey.)

Q. Her bedroom is upstairs? A. Yes.

Q. Did you find any rubbers up there, Pat?

A. I didn't find anything like that.

Q. Did you make a thorough search?

A. Yes, we did.

Q. Are there lights up there? A. Yes.

Q. The house is wired for lighting upstairs?

A. Yes, it is.

Q. Did you use anything else to illuminate the upstairs?

A. Well, in the closets there we used a flashlight.

Q. So you made a thorough search, Pat?

A. Yes.

Q. And your Mom was with you, you testified?

A. Yes.

Q. Although you just heard her testify that, undoubtedly, she didn't remember; is that right?

Mr. Ziegler: He wasn't in the courtroom.

A. I was outside.

Q. (By Mr. Gilmore): I see. Did you search the rafters too? A. Yes, I did.

Q. And the closet? [202] A. Yes.

Q. Why did you pay particular attention to and search the rafters upstairs?

A. Well, I searched any place where there could have been anything like that. They were open.

Q. And of course, Pat, you had heard that there was evidence upstairs? A. Yes.

Q. Had you not, before this search?

A. Yes.

(Testimony of Pat Pawsey.)

Q. Now, you have been well acquainted with Loretta, I suppose, through your family relationship and you know her pretty well, do you?

A. Yes.

Q. What is her reputation——

Mr. Munson: I object, your Honor. There is no foundation been laid for this.

Mr. Ziegler: You don't know what the question is yet, Mr. Munson.

Mr. Munson: Her reputation.

The Court: Well, I don't know what the reputation is going to be for.

Mr. Gilmore: For truth and veracity.

The Court: Objection is overruled.

Q. (By Mr. Gilmore): Pat, do you know the reputation of [203] Loretta in your family and in the community here for truth and veracity?

A. Not in the community.

Q. You do amongst your family?

A. Amongst the family; yes.

Q. Well, is that reputation——

Mr. Munson: I object, your Honor.

The Court: Objection sustained. It is not what it is in the family.

Mr. Gilmore: Your witness.

Mr. Munson: No cross examination.

The Court: That is all.

(Witness excused.)

ROBERT H. ZIEGLER

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Gilmore): Will you state your name please? A. Robert H. Ziegler.

Q. And your business, profession or occupation?

A. Attorney.

Q. And you are a member of what firm?

A. Ziegler, Ziegler & Cloudy.

Q. And I will ask you whether or not you know whether your [204] firm or whether your father represented Mr. Rollie Lindsey, who is on trial here today, last August, last summer?

A. Yes, sir, he did.

Q. Calling your attention, Mr. Ziegler, to the 25th day of August, 1954, do you remember that day? A. I do.

Q. And do you remember whether or not you saw Loretta Lindsey that day?

A. Yes, Mr. Gilmore.

Q. Tell the Court and jury please whether or not your father was in Ketchikan that day?

A. I don't remember whether he was in Ketchikan or not that day. I don't believe he was. I know he wasn't in the office that day.

Q. Now, where did you see Loretta Lindsey that day? A. At my office.

Q. And, by the way, you testified as to your profession and your association. Are you also a notary public?

(Testimony of Robert H. Ziegler.)

A. Yes, I am, Mr. Gilmore.

Q. Now, I will ask you whether or not you took a statement from Loretta Lindsey that day in your law offices? A. Yes, sir.

Q. And tell us who was present when she made this statement.

A. Well, Loretta was there; I was there; Mrs. Joe Francis, [205] who is our stenographer, was there; and Mr. Lindsey was there.

Q. Now, was it a free and voluntary statement on Loretta's part? A. Absolutely.

Q. Now, will you describe to the jury the manner in which the statement was made by Loretta—by that I mean whether or not it was in question and answer or narrative form—in your own words, if you will?

A. Yes, sir. Mr. Lindsey and Loretta appeared in my office the morning of the 25th of August, and they acquainted me then with the fact that she wanted to let us know, as her dad's attorneys, that she had not been telling the truth when she had filed this complaint before against her father, and, when I realized the seriousness of what she was about to say, I summoned our secretary in with her notebook, and then in question and answer form we reduced our conversation to writing, and after we had all the information taken down Loretta and her father left. I would say that took about forty-five minutes, as a minimum; maybe longer than that; but we finished in the morning. And then late that afternoon, as I recollect, she and her father

(Testimony of Robert H. Ziegler.)

came back, and I had her read the affidavit which had been typed, or the statement, very carefully. Prior to that I had explained to her [206] fully what perjury meant and so on and so forth. She read the statement, and then I swore her in, and her hands were upraised, and I said in words to this effect, "Do you swear that the contents of the affidavit or statement you are about to sign are the truth, the whole truth and nothing but the truth?" And she said, "I do," and she signed, and I notarized her signature.

Q. Bob, who asked the questions that were put in her affidavit?

A. I asked the questions, Mr. Gilmore.

Q. And who gave the answers?

A. The Lindsey girl.

Q. Now, on some of the questions was there a discussion before the answer was finally put down in writing, and, if so, would you tell the jury about that?

A. Yes, sir. Well, approximately, on four to six of the questions there would be some discussion before the answer would be given in final form. I would say that I joined in those conversations too. Mind you, this happened three months ago, and I can't be too certain as to what the questions were or those that we talked about. I am quite sure that we had quite an extensive discussion as to perjury.

The Court: Well, now, right there. You mentioned perjury. Don't you know that that wouldn't constitute perjury? [207]

(Testimony of Robert H. Ziegler.)

A. Well, it is my understanding, your Honor, if she was going to under oath make a statement under oath——

The Court: No statement before a notary public is perjury. It has got to be in a proceeding where the oath is required or authorized by law.

A. Well, no; then I was incorrect then, and I am incorrect now, your Honor. I thought as long as she was sworn——

The Court: No. You can't predicate perjury prosecutions on a false affidavit made in connection with such a proceeding.

A. Well, I so advised her at that time, your Honor.

Q. (By Mr. Gilmore): Now, Bob, did Rollie Lindsey suggest any of the answers to the questions?

A. No. The statements, the answers, as reduced to written form are the statements made by her. There may have been discussion on some of those questions before they went down, but I am positive in my own mind that the answers were given by her.

Q. Was there any attempt at any time by Rollie Lindsey to influence in any way Loretta in the answers that she gave?

A. No. As a matter of fact, I think once or twice she may have asked him about a date or a name or when she came back from Wrangell or something to that effect. As I say, I can't remember with particularity; but there was [208] no coercion used upon her, no duress.

(Testimony of Robert H. Ziegler.)

Q. And the discussion that you referred to, which was preliminary to the final wording which Loretta offered, related to maybe four to six questions of the entire statement?

A. Mr. Gilmore, I can't say with particularity. As I recollect, there wasn't too much conversation, but there was some.

Q. Now, it was in the afternoon when Loretta came back?

A. Some three or four hours later, as I recollect.

Q. Her father came back with her?

A. That is correct.

Q. And after you swore her—she read it before you swore her?

A. Absolutely.

Q. What did you say to her about reading it?

A. I told her to read it, as I recollect, carefully and slowly.

Q. And did she appear to do that?

A. She did appear to do that; yes, sir.

Q. She then signed the statement?

A. That is correct.

Q. And you administered the oath to her?

A. That is right.

Mr. Gilmore: I intend to offer this as an exhibit in the case. Do you want to look at it? (Handing document [209] to Mr. Munson.)

Mr. Munson: Are you offering it on the basis of his testimony?

Mr. Gilmore: Yes.

Mr. Munson: Well, I object to it, your Honor, on the ground that in the first place that it is not

(Testimony of Robert H. Ziegler.)

the best evidence of what took place at that interview, for the reasons already assigned yesterday, and for the further reason that it still does not represent, by this witness' own statements, what happened at that interview, in that there were discussions, I presume, between Loretta and Rollie Lindsey, since he said he just entered some of the discussions, and I doubt if the secretary entered into any, and also for the further reason that at the time this affidavit was made this girl was under a grand jury subpoena and was a complaining witness in a case, and that she was brought to this office by the defendant in this case without any knowledge on the part of me or anyone in my office and without anyone from my office being present at this interview, and that in my opinion it constitutes poor evidence of what took place and the circumstances of what took place in that office on that date, August 25, 1954.

The Court: Well, of course a good many of those objections are obviated by the fact that it bears her signature, but I am rather in doubt about its admissibility, due [210] to the fact that the girl was only at the time fourteen years of age and was taken by her foster father to the office of an attorney, and it seems to me that the influence that the father exuded over her would be presumed. I am just wondering whether it is admissible under the circumstances developed by this case.

Mr. Gilmore: Well, your Honor, we will if we haven't already convinced your Honor, I am sure,

(Testimony of Robert H. Ziegler.)

beyond any doubt, that there was no influence or coercion used in connection with this statement.

The Court: I am not saying that there was actual coercion or anything, but the circumstances were such that it would imply coercion, the relationship of the father to a fourteen-year-old girl.

Mr. Gilmore: Your Honor has in mind the letters that she wrote before she left Wrangell?

The Court: No, I don't have those in mind, because there was nobody there exerting any influence on her, as I understand it.

Mr. Gilmore: No; but, I mean, it is preliminary to her coming down and doing this. She wrote that she was coming down to do the very thing that she did, your Honor.

The Court: Well, if she did that, not in somebody else's office with her father present and, according to her testimony, suggesting to her the answers to make, why, then I would say the two would be on a par. [211]

Mr. Gilmore: Let's question him up and down to see if she did. I tried to be very careful——

The Court: You have; but I am speaking not now of his testimony but of her testimony that the defendant suggested at least some of the answers so that there is——

Mr. Gilmore: You mean prior to their getting to the law office, you mean, maybe?

The Court: Well, I think her testimony was limited to what occurred at the law office, but I think that there is a serious enough question of the ad-

(Testimony of Robert H. Ziegler.)

missibility of this to warrant my reserving a ruling on it until a later time, and counsel can submit what authorities they have.

Mr. Munson: Well, your Honor, I would like to urge another ground of objection, and that is that the only basis upon which this statement could be introduced would be to show a prior inconsistent statement, and the complaining witness on the stand admitted the circumstances surrounding the interview, and we now have another witness on the stand for the defense who can testify to the same matters. I submit again that it is hearsay and could be introduced only to show a prior inconsistent statement, and there has not been a prior inconsistent statement in the testimony, in evidence, by the complaining witness, and also I urge again that it is not the best evidence of what happened that day.

Mr. Ziegler: If the Court please, I would just like [212] to add this, if you will permit me. I think everything that has been said by the District Attorney here goes not to the admissibility of the statement but to the weight of it. These things can be argued as to the weight and effect of the statement, but, as to the admissibility of a statement that was signed before a notary public, I think it is absolutely admissible. These matters go purely to the weight and effect of it, not to its admissibility.

Mr. Munson: Well, your Honor, swearing before a notary public doesn't work any magic with legal papers, and this paper is no more admissible than if it had not been sworn to.

(Testimony of Robert H. Ziegler.)

The Court: Well, it isn't the sworn character of it so much as it is her signature on it, and, of course, when you speak of her signature, then we are confronted with the question of whether the circumstances were such that they constituted coercion or undue influence.

Mr. Ziegler: That would be a matter entirely for the jury, your Honor. I don't see how that can be passed upon.

The Court: It may very well ultimately be, but in the meantime I said I would reserve ruling and counsel can submit what authorities they have.

Mr. Ziegler: Pardon me. If the Court please, I think in this stage of the trial we should be advised as soon [213] as we can whether the Court is going to admit this in evidence because it comes at this time of the trial when it is necessary either to have it in evidence or know it is not going to be introduced in evidence.

The Court: How will it affect you if the ruling is reserved?

Mr. Ziegler: Well it may affect us in many ways.

The Court: But, name them.

Mr. Ziegler: Well, I can't name any specific ways because I can't tell what is going to develop.

The Court: Well, when it develops, you can call the Court's attention to it, but in the meantime there is nothing so unusual about the Court taking a question of this kind under advisement for the purpose of later ruling.

Mr. Gilmore: Well, your Honor, the next wit-

(Testimony of Robert H. Ziegler.)

ness that we will call will be Mrs. Lindsey, and she, your Honor, will testify to the circumstances relating to Loretta coming to their home after writing the letters advising that she was coming for the purpose of doing what was done and said in that statement and——

The Court: That may be, but she wasn't present at the office.

Mr. Gilmore: No; but then we have Mr. Ziegler and Mrs. Francis, the secretary, and at home we have the wife, so we don't know where—see, in the first place there is no [214] evidence of duress, and in the second place we have combatted every possibility that there was any.

The Court: Well, I don't get what you are driving at now. For instance, this ruling of mine doesn't preclude you from calling Mrs. Lindsey or anybody else.

Mr. Gilmore: No; I realize that; but, I mean, I am pointing out in advance now that it will show, I am sure, clearly to your Honor that she came forth voluntarily to make this statement.

Mr. Munson: She has already admitted that, your Honor.

The Court: It isn't so much—my ruling doesn't for a moment imply that there was any actual coercion or any psychological pressure or anything of the kind. My ruling involves the question of whether or not the circumstances and the relationship of these people were not such as to imply undue influence and coercion without anything having

(Testimony of Robert H. Ziegler.)

been said, but of course there is testimony here of the complaining witness that answers were suggested to her by the defendant.

Mr. Ziegler: That still goes, as I pointed out to the Court, to the weight.

The Court: I understand your position, but that doesn't solve the question as I see it.

Mr. Ziegler: Well, the Government's position then is that any time a sworn affidavit is produced in court, if [215] the person who signs it repudiates it or in any way indicates that it is not her affidavit, then it becomes inadmissible.

The Court: Oh, that is not stating the situation here. The crucial thing here is the relationship between the parties and the undue influence that one had within his power to exercise over the other. That is the crucial question. You may call your next witness, or is there cross examination?

Mr. Gilmore: You may be excused. Excuse me. Is there any cross examination?

Mr. Munson: Yes.

Cross Examination

Q. (By Mr. Munson): Bob, you said this took place a couple of months ago and all of the details aren't fresh in your mind; is that correct?

A. That is correct. Just about three months ago Thanksgiving.

Q. In other words, when you said that to your knowledge Mr. Lindsey didn't suggest any of the

(Testimony of Robert H. Ziegler.)

answers to Loretta in these discussions, you can't be absolutely sure of that?

A. Well, I can in this respect, Mr. Munson. I know that this was a serious matter, and I knew that I took my time with this, and I am quite sure that then, as now, I wouldn't have permitted him to have told her what to say [216] in an affidavit that I was preparing.

Q. But you did permit him to be there when this examination was going on?

A. He was present, certainly, but they both walked in together and——

Q. Did you know she was under subpoena at that time? A. I am not sure, Mr. Munson.

Q. Did you know he was the defendant in the case?

A. I knew he was the defendant, absolutely.

Q. And that she was the complaining witness?

A. I knew she was.

Q. And you didn't notify me about this interview?

A. As I recollect, there were no District Attorneys in town at that time, and I thought in view of the seriousness of what she was evidently prepared to tell me that I had every justification in the world for going ahead and reducing that statement to writing, which I did, and——

Q. And as quickly as possible before she changed her mind; is that it?

A. No. No. I immediately sent you a copy of

(Testimony of Robert H. Ziegler.)

that affidavit, if I am not mistaken; by "immediately," the next day or so.

Q. We had a secretary downstairs, did we not, in the office? A. I presume so; yes.

Q. She could have been there, couldn't she?

A. If I had thought about it; certainly; but I didn't think [217] about it, however.

Q. Now, you say that, when Loretta came to the office, she came with Mr. Lindsey?

A. I believe so; yes.

Q. In the morning? A. In the morning.

Q. And, when she came back in the afternoon to sign the affidavit, he was with her again?

A. That is correct.

Q. Didn't anything about this interview strike you as being unusual?

A. No. No. Can I tell you why? Because, as I told you, in the letter I wrote you, Mr. Munson, one of the things——

Q. Well, I don't want you to introduce any of that.

A. Well, then I can't answer your question without embarrassing you.

Q. Now, you said Loretta came back in the afternoon and she was accompanied by Mr. Lindsey? A. As I recollect; yes.

Q. And you handed her this affidavit and said, "Read it". Did she read it out loud?

A. She sat down in a chair across from me and my desk, and I said, "Take your time with this. Read it carefully and slowly," and I believe that—

(Testimony of Robert H. Ziegler.)

I don't know, Ted, but I think that Rollie and I discussed other matters while she [218] was sitting there in the chair and reading it.

Q. Like this case?

A. Could be. Could be the fishing season; could be anything. I don't know.

Q. Did she read it out loud? A. No.

Q. And then, as far as you know, you don't know whether she read it at all?

A. Well, I know she was told to. I know she had it in front of her for several minutes.

Q. And then you put her under oath?

A. That is correct.

Q. And at the time you put her under oath you realized that it had little or no significance except that you identified her as the person who signed that statement?

A. At the time I put her under oath I treated it very seriously indeed and of great significance because——

Q. As a lawyer, you know that you don't have any power to put her under oath?

A. As a notary public, I thought you did—subscribed and sworn to before me this certain day, you know.

Q. And you thought that that would make the document more legal, more proper?

A. Perhaps more impressive to her.

Q. But you don't remember the details of that interview [219] clearly. In other words, while you were sitting there——

(Testimony of Robert H. Ziegler.)

A. Oh, I couldn't now, except in general terms of what we talked about, without having the affidavit before me to refresh my memory.

Q. What I mean is, as you look back on that interview, you weren't paying too much attention to really all that was going on. You just wanted to ask her some questions and get some answers, and you noticed that she and the defendant were talking?

A. Infrequently, Mr. Munson; not the whole time.

Q. Well, I am not asking you how often, but that they talking and that the secretary wasn't taking that down, or did she take it down?

A. I don't believe she did. I don't believe she took everything down.

Q. I mean, she might have taken all of it down and then just transcribed the colloquy between you and Loretta; is that correct?

A. I don't know. I know this, that the questions that I asked, I presumed and still presume, were verbatim, and I have no reason to assume that the answers, as given, were anything else but verbatim also.

Q. Now, were these questions—did you just think of them yourself, or did you get help from Mr. Lindsey in framing your questions? [220]

A. I thought of them myself—I knew the background—as far as I can recollect, all of them; yes. I knew the background of the charges in the case.

Q. Bob, I want you to think hard now——

(Testimony of Robert H. Ziegler.)

A. As hard as I can.

Q. —as hard as you can, back to that day. Did Loretta ever say to you or in your presence so that you could hear, “I wonder what Mr. Munson will think of all this”?

A. She could have; she could not have; I don’t know.

Q. “I wonder what Mr. Munson will say when he finds out about this”?

A. I don’t remember. She could have said it. I don’t deny that she did; I don’t admit that she did. I do not know.

Mr. Munson: That is all the cross examination.

Redirect Examination

Q. (By Mr. Gilmore): Bob, did you tell Rollie to come back, and Loretta, and sign the statement so that they could go down and take a copy down to the United States Marshal’s Office as soon as it was prepared?

A. I believe Rollie did say he wanted—now that you mention it—I believe he did say he wanted to take it right down to the Marshal’s Office and show Fred Bryant.

Q. No representative of the D.A.’s Office in Ketchikan was [221] here?

A. There were no District Attorneys here, as I recollect.

Q. Now, about the method of reducing the answers to the questions that were put by you to Lor-

(Testimony of Robert H. Ziegler.)

etta, it followed the usual form that you do on any occasion——

Mr. Munson: I object to that as leading, your Honor.

Q. ——when you reduce a statement; isn't that right? A. That is right. It was——

The Court: The objection is sustained on the ground that it isn't what is done at other times; it is what was done this time.

A. Well, it was a simple question and answer interview.

Mr. Gilmore: No further redirect.

Recross Examination

Q. (By Mr. Munson): I would like to clear up something on recross. I just want to clear up one thing. A. All right; if I can.

Q. The fact that there were no D.A.'s in Ketchikan——

A. I said that is my recollection now. I don't think there were, or I feel sure that I would have notified them. I could be wrong about that, but I don't think that I am, Mr. Munson.

Q. Oh, I am not disputing you on that. I just wondered—it [222] has been quite sometime that there hasn't been a regular Assistant United States Attorney down here, hasn't it? A. Yes.

Q. And in situations of that kind, when you feel that something important has come up and that the United States Attorney or an Assistant should be notified, what do you do?

(Testimony of Robert H. Ziegler.)

Mr. Gilmore: I object, if the Court please. The question is related to this time.

The Court: Well, but the question is open here as to the propriety of taking such a statement. The Court hasn't ruled finally on its admissibility, so the good faith of the person taking it can be gone into.

A. I answered that question before, Mr. Munson in this way——

Q. I didn't hear you.

A. I thought that what she told me she was about to say was of such gravity and such importance and seriousness that I would be justified to promote the ends of justice by taking her statement.

Q. Well, what I meant is, when you encounter another important situation like that that concerns my office and I am up in Juneau, what do you do?

A. Let me put it this way——

Q. No. Just answer me now. What do you do normally when you want to get in touch with a United States Attorney [223] or an assistant?

A. We phone or we wire or we write.

Q. But you didn't phone or wire that day, did you?

A. No, I did not.

Mr. Munson: That is all.

A. Any more questions, Mr. Gilmore?

Mr. Gilmore: No further questions. Thank you very much.

Whereupon Court recessed for five minutes, reconvening as per recess, with all parties present as

heretofore and the jury all present in the box; and the trial proceeded as follows:

VICTORIA LINDSEY

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Gilmore): Will you state your name please? A. Victoria Lindsey.

Q. And you are the wife of the defendant, Mr. Rollie Lindsey? A. I am.

Q. And where do you live?

A. 1067 Woodland Avenue.

Q. How long have you lived in Ketchikan?

A. Practically all my life. [224]

Q. And your occupation?

A. Housewife.

Q. And you have children, do you?

A. Three.

Q. And adopted children?

A. Robert and Loretta.

Q. And what are the ages of your own children?

A. Three, two, and approximately nine months.

Q. And when did you and your husband adopt Bob and Loretta?

A. About eight years ago.

Q. In about 1946 or '47?

The Court: I don't think there is any dispute over that anyway.

Mr. Gilmore: All right, your Honor.

(Testimony of Victoria Lindsey.)

Q. (By Mr. Gilmore): Now, have Bob and Loretta lived with you and your husband since the time of their adoption, that is, up until the time of these charges?

A. They have, except for Robert on the occasion when he ran away and was down at Boys' Town for several months.

Q. Did he run away more than once?

Mr. Munson: I object, your Honor.

The Court: Objection is sustained. It has already been sustained to a previous question. We are not investigating Bob Lindsey here or the time he ran away or anything.

Mr. Gilmore: I beg the Court's pardon. [225]

Q. (By Mr. Gilmore): Now, have you had any difficulty in bringing up or in raising Loretta since you have adopted her?

Mr. Munson: I object again, your Honor, as immaterial.

The Court: Objection sustained.

Q. (By Mr. Gilmore): Now, Mrs. Lindsey, I am going to call your attention to a time in April of this year and ask you whether or not you remember one particular afternoon when Loretta was late in coming home from school. Do you recall such an instance?

A. Yes, I do.

Q. Can you tell us approximately when that was?

A. It was a day or two before Easter.

Q. And what did you do about it when she didn't come home from school?

The Court: Well, now, what is the purpose of

(Testimony of Victoria Lindsey.)

this line of questions? I just don't see the materiality of it. Will you disclose your purpose?

Mr. Gilmore: Well, it is simply, your Honor, it was just preliminary to the next question that will show that she did come home late and under what circumstances.

The Court: Well, but suppose she did come home late. I just don't see the materiality of it. What then?

Mr. Gilmore: Where she was before coming home. All [226] right. I will waive that question, if the Court please.

Q. (By Mr. Gilmore): And ask you when she did come home, as you recall, that day, about what time of the day it was?

Mr. Munson: I object, your Honor, as being immaterial.

Mr. Gilmore: Well, it is to what took place, your Honor.

The Court: But Loretta Lindsey is not under investigation here either. The fact that she might have come home late or——

Mr. Gilmore: It is simply preliminary to the charge, and of course the next question would relate directly to that.

The Court: Well, then, just skip the preliminary question, since it is of that nature, and ask her the question that you intended ultimately to ask.

Q. (By Mr. Gilmore): Now, when she did come home, did she come home alone, or was she with somebody? A. She was with my mother.

(Testimony of Victoria Lindsey.)

Q. And was there some unusual occurrence when she did come home that day, Mrs. Lindsey?

A. Just what do you mean by "unusual"?

Q. Well, was there some kind of a statement made or a charge made that day by Loretta?

A. Yes, there was.

Q. And go ahead and tell the jury please what that was, what [227] was said there.

The Court: But now——

Mr. Munson: I object, your Honor.

The Court: ——Here again we have the situation——was this question asked Loretta? If it wasn't, why, there is no foundation laid for it.

Mr. Gilmore: Well, I wonder if the Court would allow us now to call Loretta and ask her these impeaching questions, lay the foundation for them, because they are of tremendous importance and will be of value to the jury.

Mr. Munson: Well, your Honor, I oppose bringing that girl back, because we spent something like three hours yesterday afternoon in a rambling cross examination in which the defense had ample opportunity to bring out anything that might have been important to their case, and I object also on the ground that the testimony that is sought to be elicited is pure hearsay and that the witness on direct has already testified to most of the matters that they seek to elicit in any event.

The Court: Well, I don't remember exactly what she testified to, but it is elementary of course, as I have said so many times, that you can't impeach

(Testimony of Victoria Lindsey.)

a witness by asking a question of another witness that was never put to the witness sought to be impeached, and the only time that an exception is made and the witness permitted to be recalled is where you [228] didn't have knowledge of the evidence or that it was sheer inadvertence that you overlooked it, but ignorance of the rule certainly wouldn't justify calling the witness back.

Mr. Gilmore: Well, your Honor, of course the testimony that is attempted to be elicited is of course the original charge that the adopted daughter here made against her father to her mother, and of course is definitely a part of the *res gestae*——

Mr. Munson: Just a moment.

Mr. Gilmore: And I think she should be permitted if for no other reason, to be allowed to testify on that ground.

Mr. Munson: As the defense pointed out to me not too long ago, what happened on two or three days before Easter is not part of the *res gestae*.

The Court: No; it is not part of the *res gestae*. The situation resolves itself into this, that the witness Loretta Lindsey testified to a complaint that she made or something of that sort, but she was not asked the question that you now seek to ask of this witness, and, therefore, if the Court permitted you to ask this witness that question, he would be permitting the impeachment of some witness who never had the opportunity to admit or deny this conversation. You are apparently calling for a con-

(Testimony of Victoria Lindsey.)

versation, and the only way that you can get away from the hearsay rule is to show that [229] the witness Loretta made some inconsistent or contradictory statements at some other time than the time that she testified in the courtroom, and in order to get those in you have got to lay a foundation for them.

Mr. Gilmore: Well, if the Court please, I will proceed.

Q. (By Mr. Gilmore): And ask you, Mrs. Lindsey, whether or not Loretta made a charge that day against your husband concerning an assault or rape upon her?

Mr. Munson: I object, your Honor.

The Court: You can answer that yes or no, but you can't say what Loretta said in making the charge. You can answer yes or no that she made the charge.

A. Yes; she did make the charge.

Q. (By Mr. Gilmore): Did she also state, or did she tell you that her dad had threatened to kill her?

Mr. Munson: Objected to as leading, your Honor.

The Court: Unless the question has been asked Loretta, the objection has got to be sustained.

Q. (By Mr. Gilmore): Now, was that the first time that she had ever made a charge of that kind or an allegation of that kind against your husband?

A. Yes, it was.

Q. And were you surprised and shocked when you heard it? A. Yes, I was. [230]

(Testimony of Victoria Lindsey.)

Q. And, when you heard her make this announcement, did you feel and get the impression that she was lying to you?

Mr. Munson: I object, your Honor.

The Court: Her impression of course is immaterial. It is for the jury to say whether this is true or not. Objection sustained.

Q. (By Mr. Gilmore): Now, was Bob there that day? A. Yes, he was.

Q. And he was present when this charge was made by Loretta against Rollie?

A. Yes, he was.

Q. Do you remember whether or not about that time and place Bob went upstairs and then came back downstairs?

A. Well, when Loretta came in, he was in the kitchen doing dishes with the two boys that were staying with us, and my mother had wanted us to go in the bedroom because she said she had something she wanted to tell me, and I didn't figure that they could hear us in the kitchen, so I told her——

Mr. Munson: I object to this narrative, your Honor. She hasn't answered the question.

The Court: Well, you can just eliminate the details and answer the question. For instance, what might have happened in the kitchen is not material, and it is not important.

A. Well, when Robert, I mean, when Loretta came to the [231] house, Robert was in the kitchen with the boys, and, when she started to tell me about this, Robert and the boys went upstairs.

(Testimony of Victoria Lindsey.)

Q. All right. Did he come downstairs again shortly after that? A. Yes, he did.

Q. What did he do when he came downstairs?

A. Well, he joined in with Loretta in telling about the charges against Mr. Lindsey.

Q. And without saying what he said, what did he do? A. Well, he——

Q. Did he exhibit anything?

A. Well, he was busy visiting around, and finally he came over and took a little can out of his pocket and set it on the arm of the chair alongside of me and started towards the kitchen, but he said, "Here is the proof."

Q. And would you recognize that can if you saw it again? A. I believe I would.

Q. I show you this object and ask you if that is not the can or the object that he came down and placed on the side of the chair and said, "Here is the proof"? A. Yes; that is.

Q. Was there anything in it, or did you look in it?

A. Right at the moment I didn't open it. I lifted it up and looked at it and told him—he seemed to know quite a [232] bit about those things——

Mr. Munson: I object, your Honor.

The Court: That is immaterial here.

Q. (By Mr. Gilmore): Now, did you examine it later, the contents? A. Yes, I did.

Q. Was there anything in it?

A. There wasn't anything in it.

Q. Empty, the way it is now? A. Yes.

(Testimony of Victoria Lindsey.)

Q. Where did Bob get this; do you know?

A. From what he said, he just said that it was his dad's. He didn't say where he got it. I just saw him take it out of his pocket.

Q. I see. And he had gone up to his room just before exhibiting this?

Mr. Munson: I object to that, your Honor.

The Court: To what?

Mr. Munson: That he had gone up to his room. I don't think she said that. She said he had gone upstairs and came back downstairs.

The Court: Well, unless you know that he went up to his room, why, you wouldn't hardly be permitted to answer the question "Yes," simply because he asked it in that form, whether he went up to his room. Did he go up to his room? Do you [233] know that?

A. Well, from the way the house is situated, the front room is right underneath Loretta's room, and with the shoes that Bob wears, I would have heard him or the boys—they have cleats or something on their shoes—I would have heard them if they had gone into Loretta's room.

The Court: Well, but did you hear them at all upstairs so that you could tell what room he went into?

A. I heard him go upstairs, but I didn't hear him come across the floor over to Loretta's room, because there is quite a distance between the rooms.

Q. (By Mr. Gilmore): Do you know where this

(Testimony of Victoria Lindsey.)

has been since the time that Bob brought it down and threw it out there that day?

A. Well, it had been in my possession until I brought it down to the lawyer's office.

Q. Continuously since that day?

A. Yes.

Mr. Munson: No objection.

Mr. Gilmore: We offer this as defendant's exhibit.

The Court: What probative value has it?

Mr. Gilmore: The probative value of the motive on the part of the individual that produced it in support of this——

Mr. Munson: I object to its admission, your Honor, [234] on that ground.

The Court: That would depend on the testimony of the person, but standing alone that box is just like any other box, apparently. If there is no way of tracing it to somebody, why, it wouldn't serve any different purpose than any one of a thousand boxes of that kind. In other words, it has no probative value in and of itself.

Mr. Gilmore: Well, doesn't it appear as though he went up to his room, Bob did, and got it out of his room and then offered it in support——

The Court: Well, even if that were true, it has no evidentiary weight of itself any more than any one of a thousand of those boxes would, and so you have all the evidence in there on that that has any evidentiary value, and this serves no purpose. There is no use of cluttering up the record with it. If you

(Testimony of Victoria Lindsey.)

had some—if there was something on it that would identify it with some person or that would enable it to be traced to some person, why, then of course it would have evidentiary value.

Mr. Gilmore: I see. Well, I won't pursue the point. I just thought, it was in her possession continuously to this day or the lawyer's.

Mr. Munson: Your Honor, I would like to move that the testimony that was led out of this witness concerning the box being in Robert Lindsey's room be stricken on the ground [235] that there is no testimony to support it, except the inference from the question itself and that this witness has already——

The Court: Well, of course, that is true of a lot of answers that witnesses make. They might appear to be somewhat weak, but the weight of it is not a bar to its going before the jury.

Q. (By Mr. Gilmore): Now, I don't know whether or not I did, I don't think I did, ask you, Mrs. Lindsey, whether or not you believed Loretta when she made——

The Court: Yes, you asked her, and I ruled it was immaterial what her impression was. It is for the jury to determine whom to believe here.

Mr. Gilmore: All right.

Q. (By Mr. Gilmore): Now, I will ask you, Mrs. Lindsey, whether or not, sometime after Loretta made this charge, whether or not you discovered a letter or whether Loretta wrote a letter to

(Testimony of Victoria Lindsey.)

the effect that her suitcase had been packed about a week before she told this story——

Mr. Munson: I object to leading the witness, your Honor.

Q. ——about her father?

Mr. Munson: I object to the leading of the witness and suggesting the answer in the question.

The Court: Well, I don't quite get the materiality of it. Is it the purpose to show that she intended to run [236] away from home?

Mr. Gilmore: Yes, your Honor; that she had it all planned. It was her plan and her scheme.

Mr. Munson: Now I object to it as immaterial, your Honor.

The Court: Well, it has got to show more than that, otherwise it is just an immaterial incident in the life of a witness.

Mr. Ziegler: Now, if the Court please, will you permit me to be heard on it?

The Court: Well, if you want to show something more than the mere preparation to run away.

Mr. Ziegler: Well, that was the reason we asked for a ruling on the statement, your Honor, because it appears from that statement that the reason she made the charges was she wanted to get away from home and that she was planning to get away from home. Now, that is the reason we wanted to have the ruling on it, to know whether we are going to be able to introduce this testimony. It is part of the motivation that the defense will prove in this case.

Mr. Munson: But the motivation of the complain-

(Testimony of Victoria Lindsey.)

ing witness is not a part of this case, your Honor.

Mr. Ziegler: Motive is always a question, if the Court please.

The Court: Yes; the motive of any witness can be [237] gone into.

Mr. Munson: But not to run away, your Honor; that is what I mean. Whether she had a motive to run away is immaterial.

The Court: Well, but the motive that he mentions is the motive to falsely accuse.

Mr. Ziegler: That is correct.

The Court: But again we have the situation here that the witness Loretta Lindsey was not asked that.

Mr. Ziegler: Not on the stand; no; but it is a conflicting statement that she made after she made the charge. It contradicts her statement that——

The Court: But before you can ask this witness about that, she should have been, Loretta Lindsey, should have been, asked that while she was on the stand.

Mr. Ziegler: Well, of course, I think the Court can understand our position on that. The affidavit that she made——

The Court: No. There is one thing you don't understand about this affidavit and my ruling, and that is this. Suppose you had never taken that affidavit there; would you mean to stand here and tell me that, therefore, you couldn't ask any questions about what occurred in your office? Why, it is perfectly absurd.

Mr. Ziegler: No. No, your Honor.

(Testimony of Victoria Lindsey.)

The Court: I have told you all the time that you [238] could ask any question you wanted as to the occurrence in that office with relation to the taking of this affidavit but you couldn't read from the affidavit.

Mr. Ziegler: Not until the Court rules on it.

The Court: You could question about the incident in the office without any ruling of the Court whatever.

Mr. Ziegler: Yes, the circumstances in taking it, but nothing with respect to the contents of the affidavit.

The Court: Certainly; but, as I say, suppose you had never taken this affidavit, you could have questioned Loretta Lindsey on everything that anybody remembered.

Mr. Ziegler: Oh, yes; that is true.

The Court: And so the only bar set up by my ruling is that you couldn't read from the affidavit itself, so, since you are not precluded by my ruling from putting in any evidence of that kind, why, I can't do anything now but sustain the objection to the question that has been asked this witness because it has not been asked Loretta Lindsey.

Mr. Ziegler: Well, if the Court please, as I understand it, we can't prove motive or her reason for making this charge.

The Court: Yes, you can prove motive, but, if you are going to prove motive by what somebody did or said, by what Loretta Lindsey did or said, you should have asked her about it when she was

(Testimony of Victoria Lindsey.)

on the stand so she would have the [239] opportunity to either admit or deny it.

Mr. Ziegler: She will have plenty opportunity to deny it after the statement is introduced.

The Court: Except that you would reverse the order in which such evidence must go on, and that is that, before you can impeach a witness by showing a motive or anything of that kind, you have got to put the question to her first.

Mr. Ziegler: Well, of course we can't—

The Court: For instance, you can see how unfair it would be, if you brought out from this witness, let us say, the fact that Loretta Lindsay was very hostile to her father and had trouble with him, without having asked Loretta Lindsey about this trouble when she was on the stand. That is the whole nub of the objection here.

Mr. Ziegler: Well, until we have a ruling on this admissibility of the affidavit of course we will probably have to depart from this one question, which we will do in compliance with the Court's ruling.

The Court: That isn't the basis of the Court's ruling. The basis of the Court's ruling on this, as on a few others, has been that Loretta Lindsey was not asked the same question when she was on the stand and given an opportunity to deny or explain it or admit it.

Mr. Munson: For the record, your Honor, I would like to urge another ground of objection, on the ground of [240] irrelevancy, that the running away from home or any acts or statements con-

(Testimony of Victoria Lindsey.)

cerning running away from home do not tend to have any probative value.

The Court: Well, but counsel does not claim that that is his purpose. Counsel claims that he intended to show that she had formed the intent to run away and, therefore, had a motive to make this accusation, and, of course, he would be allowed to show that had he asked her the question when she was on the stand.

Mr. Munson: But the running away could be equally consistent with the Government's case.

The Court: Yes; but it isn't a mere running away. You have to connect the running away with something that would tend to show motive.

Q. (By Mr. Gilmore): Now, after these charges or this charge was made against your husband by Loretta, do you know whether or not Loretta went to Wrangell?

A. I had heard that she was there, and a friend of mine had gone up there and seen her and told me that she saw Loretta up there.

Q. Now, when did Loretta return to Ketchikan from Wrangell? Do you remember that?

The Court: You can mention the date. There is no dispute about when she returned.

Q. (By Mr. Gilmore): Do you recall on or about August 25, [241] 1954, the 25th of August, this year, seeing Loretta? A. Yes.

Q. And where did you see her?

A. At my home.

Q. And about what time?

(Testimony of Victoria Lindsey.)

A. Between nine and ten in the morning.

Q. And tell the jury now the circumstances of your seeing her that day?

A. Well, I had got up to fix a bottle for the baby, and Rollie was up and in the bathroom, and I heard a knock at the door. I went to answer the door, and Loretta was there, and she said, "Hi, Mom." I didn't say a word to her and went and knocked on the bathroom door and told Rollie that what's-her-name was here.

Q. Loretta?

A. Well, he asked, "Who is there?" And I said, "Loretta." And so he said, "Just a moment and I will be out."

Mr. Munson: I object, your Honor, to all this hearsay and narrative and immaterial testimony.

The Court: The objection is sustained to any conversation.

Q. (By Mr. Gilmore): What took place after you called your husband? Did he come out?

A. He came out.

Q. And then what conversation took place in his presence [242] there?

Mr. Munson: I object.

The Court: Objection sustained.

Q. (By Mr. Gilmore): Was Loretta let in the house? A. No, she was not.

Q. Did she announce the purpose of her coming to your house? A. Yes, she did.

Q. What did she say she came there for?

Mr. Munson: I object again, your Honor.

(Testimony of Victoria Lindsey.)

The Court: Objection sustained.

Q. (By Mr. Gilmore): After you and your husband denied her at first entrance to your home and after she announced her purpose in coming there, did you then let her into your home?

A. Yes, we did.

Q. How long was she in your home that morning, approximately?

A. About fifteen or twenty minutes.

Q. And where was she; what part of the house was she in while she was there?

A. In the front room.

The Court: She can testify to the fact that Loretta told her that she wanted to drop the charge, if that is the fact, but she can't relate any conversation about it because the conversation wasn't related to Loretta.

Q. (By Mr. Gilmore): Well, did she come there, did she tell [243] you she came there to drop the charges and tell the truth? A. Yes, she did.

Q. Now, what part of the house was your husband, Rollie, in? What was he doing after your daughter came?

Mr. Munson: I object, your Honor.

Q. Or were they together?

The Court: Were who together?

Mr. Gilmore: That is, Rollie and Loretta.

The Court: Well, I suppose it is preliminary, because standing alone it certainly would not tend to prove or disprove anything.

(Testimony of Victoria Lindsey.)

Mr. Gilmore: Well, your Honor, going again to the——

The Court: Well, I am not sustaining the objection, so go on.

Q. (By Mr. Gilmore): Well, what was your husband doing while she was there, and where was she, what part of the house was she in?

A. Well, Loretta was with me in the front room, and Rollie had gone to call the lawyer and also to get dressed.

Q. In other words, he called the lawyer immediately after Loretta announced that she came there to drop the charges and tell the truth; is that right?

A. Yes.

Q. What took place after Rollie made the phone call and got [244] dressed?

A. Loretta asked where the children were and she wanted to see them.

Q. Now, while she was there, when she came there that morning, did she say anything about writing you a letter? A. Yes, she did.

Q. Had you yet received a letter from her?

A. No, I hadn't.

Q. Had you received any letters from her while she had been in Wrangell up to that time?

A. No, I hadn't.

Q. Did you later receive letters from her?

A. On either that afternoon mail or the next afternoon; I am not positive which.

Q. All right. Now, after your husband finished

(Testimony of Victoria Lindsey.)

the telephone call and finished dressing, what did he do then?

A. Well, he and Loretta went on down to the lawyer's office.

Q. Do you know the purpose of their going there that morning?

A. She was going to make statements, tell the truth, and say she was going to drop the charges against my husband.

Q. And that was the very first thing she said to you when she came to your house that day and before you let her in the house; is that right?

A. That is true.

Q. Did you see Loretta again that day after she left the [245] house that morinng for Mr. Ziegler's office?

A. Yes. She was up two or three times.

Q. And she was friendly? A. Yes.

Q. Showed no animosity toward her father or you? A. No.

Q. And did she continue to visit in your home after that day——

Mr. Munson: I object——

Q. ——for sometime?

Mr. Munson: I object to this immaterial testimony, your Honor.

The Court: Well, I think it has already been gone into, but, if you want to lead up to something else, she can testify to it without there being any dispute over it, that she stayed there for sometime.

(Testimony of Victoria Lindsey.)

Q. (By Mr. Gilmore): Did she continue to visit in your home?

A. Yes; several times.

Q. Now, did she say how she happened to leave Wrangell, how she happened to come home?

A. Yes, she did.

Q. Who had she been staying with there; do you know?

A. Well, she told me that she was staying with Jack Krepps, the United States Marshal up there, and that he was the one that sent her home. [246]

Q. Did she tell you that she made a charge, an accusation, of rape against him?

The Court: Well, now, again we are back to where we started from. No question of this kind was asked Loretta.

Mr. Ziegler: She testified to it anyway.

Mr. Gilmore: Yes, she did. She testified she was pregnant by Jack Krepps.

The Court: But she did not testify, or did not deny, wasn't asked, about any conversation had with this witness, and so this witness cannot be asked about it. She was asked about her conversation with the Krepps and testified to it.

Q. (By Mr. Gilmore): Did she make a statement to you regarding Miss Seliotes, Mrs. Lindsey?

Mr. Munson: Objected to for the same reason, your Honor.

A. Yes.

Mr. Ziegler: Now, if the Court please——

(Testimony of Victoria Lindsey.)

The Court: It is a preliminary question, I assume.

Mr. Ziegler: Well, no, it isn't a preliminary question. The question may not be in proper form, but Loretta was asked specifically on the stand on cross examination if she didn't make the statement to Mrs. Lindsey to the following effect, "Didn't Miss Seliotes say to you, 'Would you rather see your father go to jail, or would you rather go to jail for perjury?'" She was asked that, your Honor.

The Court: I don't remember any such question.

Mr. Munson: The question was objected to and sustained.

The Court: There was something asked her about what she said to Miss Seliotes, but it isn't Miss Seliotes who is on the stand.

Mr. Ziegler: I know Miss Seliotes isn't. We are not trying to impeach Miss Seliotes. We are trying to impeach Loretta.

The Court: You are trying to impeach Loretta.

Mr. Ziegler: And she was asked if she didn't make that statement.

The Court: She was not asked, as I recall, about any conversation with Mrs. Lindsey at that time.

A. Yes, she was.

Mr. Ziegler: Yes, she was, your Honor. I think the record will so show. I will appeal to the record if there is any doubt about it.

The Court: I think the record will show that there was no foundation laid for this particular question, particularly as to the time, place and per-

(Testimony of Victoria Lindsey.)

sons present, because I have a rather clear recollection about what conversations Loretta was asked about, and there were very few. There was no foundation laid of the kind required by statute.

Mr. Ziegler: Maybe it wasn't broad enough to comply but I think—— [248]

The Court: It has got to name the time, place and persons present, otherwise it is deficient.

Mr. Ziegler: Well, I can't recall the exact testimony.

Mr. O'Connor: If it please the Court, I have in my notes here, and I think the record will show, at the very beginning, the first question asked Loretta at the time of cross examination, the question went, "Did Miss Seliotas of the Welfare Department talk to you about the statement" and so forth "and did she ask, 'Would you rather go to jail' "——

The Court: That is my recollection.

Mr. O'Connor: And then the question further went, "Did you tell Mrs. Pawsey that?" There was no such question about "your mother".

The Court: There isn't any foundation laid for this question.

Q. Did Loretta from the time you first saw her that morning and subsequent times during that day ever give you or give any indication that she was making a retraction of this statement and dropping the charges and wanting to tell the truth because of any influence by Rollie?

The Court: That is just getting the conversation out of her by embodying it in the question. That

(Testimony of Victoria Lindsey.)

is just another way of trying to ask something that the ruling precludes being asked. [249]

Q. (By Mr. Gilmore): Mrs. Lindsey, you heard Loretta testify today that—of all these many acts, immoral and improper acts, committed upon her by your husband, Rollie, while living in your home, under your roof. Did you ever see any evidence of any improper acts committed by your husband on Loretta at any time? A. No, I didn't.

Mr. Gilmore: You may take the witness.

Cross Examination

Q. (By Mr. Munson): Mrs. Lindsey, did you just testify a few minutes ago that on the morning of August 25th that you got up around nine o'clock, between nine and ten, to get a bottle for the baby?

A. Yes.

Q. And that shortly after that you started breakfast, having breakfast?

A. No; I didn't say anything about breakfast.

Q. Is that the normal time you would be eating breakfast, about nine o'clock in the morning, nine-thirty or ten o'clock?

A. Somewhere around about then.

Q. You are a pretty heavy sleeper, aren't you?

A. No, I am not. [250]

Mr. Gilmore: I object, if the Court please. There is no evidence——

Mr. Ziegler: That is all right. Withdraw the objection. Let him go ahead.

(Testimony of Victoria Lindsey.)

Q. (By Mr. Munson): I didn't hear what your answer was.

A. I said, no, I wasn't a heavy sleeper.

Q. You are not a heavy sleeper?

A. No, I am not.

Q. Is this the normal time for the babies to wake up, nine o'clock in the morning?

A. Not especially.

Q. What time do they normally wake up?

A. Anywhere from seven o'clock, six o'clock, eight o'clock, nine o'clock.

Q. You mean they have no regular time?

A. No, they do not.

Q. They wake up maybe six o'clock one morning and between nine and ten on another?

A. The three little ones, you can't keep them all asleep at a regular time.

Q. Well, I am talking about the baby now, the one with the bottle.

A. He doesn't have any regular, he doesn't have a set schedule.

Q. Now, when Loretta was staying with you, who normally got [251] up and took care of the baby in the morning?

A. I did.

Q. You did?

A. Yes.

Q. And you would get up anywhere—six, seven, eight, nine o'clock in the morning?

A. At different times. It wasn't a set schedule, as I said.

Q. Were there times, can you recall times when your husband was home, when you would wake up

(Testimony of Victoria Lindsey.)

early in the morning and notice that he wasn't in your bedroom?

A. No, I don't believe I do.

Q. You don't recall any? A. No.

Q. Do you recall times when you were out in the kitchen cooking supper and taking care of the kids—you have three children, haven't you?

A. Yes, I do.

Q. When you were out in the kitchen taking care of the kids and you noticed that Loretta wasn't around and that Rollie wasn't around and you came out looking for them, do you recall asking Bob Lindsey one time or a couple times where Rollie was?

A. I may have done that several times. Our house is a large house, and I may have wanted Loretta for something and just looked for her and may have asked Bob several times. [252]

Q. Do you recall Bob answering you that "They are upstairs"?

A. He could have answered that; I don't say he did; because my husband has gone upstairs numerous times to check on Loretta's room to see what condition it was in.

Q. He used to go up and check on her house-keeping in her bedroom; is that it? A. Yes.

Q. When you say "check up" on her room, I presume you mean the cleanliness and the order of the room? A. That is right.

Q. Do you recall any times that he told Loretta to go up and clean up her room and then a little

(Testimony of Victoria Lindsey.)

while later he would go up and stay up there quite a long time?

A. He had told her on numerous occasions to go up to clean up her room, and he went up later to check up on her, but he wasn't gone very long.

Q. You know that? A. Yes.

Q. Are there other times that you can remember when you looked for him and her and you didn't find them around and asked Bob where they were, and he said, "They are upstairs," and you went back to the kitchen? A. No, I don't.

Q. Have you ever gone upstairs while Rollie and Loretta were upstairs to see what was going on, to see what they [253] were doing?

A. No. I have no occasion to do it.

Q. You just never went upstairs while Rollie was up there?

A. Not that I recall. I don't remember.

Q. Now, you said that the upstairs of your house is quite large; didn't you just testify that there is——

A. Quite a large house.

Q. ——quite a lot of space up there?

A. Yes.

Q. And you said that Loretta's room was on this end of the house. Was Bob's room on the other end?

A. Yes; facing this way. Loretta's room was over on this side, and Bob's was down the other way.

Q. So that they had the whole house in between them? A. Yes.

Q. Quite a lot of space? A. Yes.

(Testimony of Victoria Lindsey.)

Q. So that, if you were in the kitchen, you wouldn't be able to hear someone walking around, say, in the area halfway between Loretta's room and Bob's room?

A. The kitchen is situated about halfway between those rooms.

Q. Oh, it is situated about halfway in between?

A. Yes.

Q. So that you would be able to hear? Do the boards squeak or something? [254]

A. No.

Q. I mean, you just hear normal footfalls? Nothing real squeaky or creaky?

A. No.

Q. And, when you were occupied with cooking supper, you weren't paying any attention to footfalls, were you?

A. Not especially.

Q. In fact there was quite a lot of noise with the kids in the kitchen and food being cooked, and it is likely that you wouldn't hear anything at all, isn't it?

A. It is possible.

Q. The kids usually cry about that time of the night, don't they?

A. Sometimes.

Q. Do you know of any time when Loretta went down to Rollie's boat?

A. Any specific time?

Q. Any time.

A. She has gone down to the boat several times.

Q. Several times. You know that?

A. Yes.

Q. How do you know it?

A. Because my husband usually came in from trolling trips and he would call up for Bob to come

(Testimony of Victoria Lindsey.)

down, or, if he had been home, been in, on a Friday night, he would tell Bob [255] they were going to go down and unload their fish in the morning, and, generally, Loretta would get all ready to go down and want to, and, if I had insisted that she stay home to help me, she would get mad at me because I would not let her go down.

Q. She liked to go down? A. Yes.

Q. Can you recall any time when Rollie called up, called you up, and asked for Loretta to come down and bring down some oil rags or something for the boat?

A. He has phoned the house several times to have different ones come down with different things for the boat.

Q. I mean, there is nothing unusual about that?

A. No, there isn't.

Q. You said that a friend of yours went over to Wrangell to see Loretta?

A. She didn't go over to see Loretta. She was up there on her own business, but, when she came back, she had thought she had told me when we were walking down to——

Q. Now, I just want to know now whether this friend of yours, who went over to Wrangell, got in touch with Loretta?

A. She ran into Loretta on the street, and she said Loretta told her that——

Q. Wait a minute now. She ran into Loretta on the street?

A. She was downtown shopping. [256]

(Testimony of Victoria Lindsey.)

Q. But she hadn't gone over there—I mean, you hadn't seen her and said, “If you are over in Wrangell, how about looking up Loretta?”

A. The first that I heard that Loretta was in Wrangell was when this friend of mine told me.

Q. How has Loretta been with the children? Has she taken care of them quite a bit? A. She has.

Q. She has been pretty good with the kids, hasn't she?

A. Up until shortly before she left home.

Q. That was one of her duties around the house, was just taking care of the younger children?

A. Yes.

Q. She probably spent as much time with them in that capacity, changing their diapers and feeding them, as you have, hasn't she, except when she was in school of course? A. Probably.

Q. And during the summertime when she was around the house she became more or less a second mother to those kids, didn't she?

A. Probably.

Q. She still thinks quite a lot of them, doesn't she? After she came to see you in August, came back to the house, and made this reconciliation with you, what was the first thing that she wanted to do? See the kids, wasn't it? [257]

Mr. Ziegler: Now, if the Court please, we have not been objecting to a lot of this questioning as not proper cross examination, but, when counsel interjects the word “reconciliation”, I don't think the testimony justifies reconciliation.

(Testimony of Victoria Lindsey.)

Mr. Munson: I don't know what other word to call it.

The Court: Well, maybe counsel can suggest some word to call it. Making up—is that objectionable?

Mr. Ziegler: Well, it is not cross examination anyway, your Honor. We haven't objected to——

Mr. Munson: Your Honor, I would like a ruling on——

Mr. Ziegler: The question is not cross examination.

The Court: What is the question now?

Mr. Munson: I just asked her how Loretta got along with the kids, and then I asked her if wasn't the first thing after she came back to the house, during those fifteen minutes that she was there, wasn't the first thing she did would be to ask to see the kids.

Mr. Gilmore: That would be immaterial, too. if the Court please, I think, because the main thing here is that we know she came home to make this retraction, and whether she mentioned the children is immaterial.

The Court: Well, her relations with the defendant and his family are material and it is within the scope of the direct examination because there was direct examination about [258] her return from Wrangell. Objection overruled.

Q. (By Mr. Munson): Did you answer that question "Yes"?

(Testimony of Victoria Lindsey.)

A. I don't believe I knew what the question was and I didn't answer it.

Q. It was about whether she asked to see the children when she came back from Wrangell.

A. Yes, she did.

Q. Now, you said that—defense counsel was very careful now to elicit this testimony from you—that on the day that Loretta first informed you about the relationship, the relations that had been going on between her and Rollie, that that was the first time she had made such a statement. Now, what you meant was that was the first time she had ever said that to you; isn't that what you meant?

A. Yes, it is.

Mr. Ziegler: What statement are you referring to, Mr. Munson?

Mr. Munson: The charges against the defendant.

Mr. Ziegler: Oh.

Q. (By Mr. Munson): Now, I want to ask you about an incident, Mrs. Lindsey. The place is your home. The people present are the defendant, Loretta, her grandmother, and you; I believe that is all. The conversation concerns this case and the dropping of these charges. Do you recall Loretta saying, "Well, what about the medical examination [259] I had that shows that I am not a virgin?"

A. I have never heard Loretta say anything about it.

Q. Did you hear Rollie say in response to that—

Mr. Gilmore: Just a moment, if the Court please.

(Testimony of Victoria Lindsey.)

She answered she didn't hear the question. How could she hear an answer to the question she didn't hear? She said, no, she didn't hear the question. Now he says, "Well, did you hear the answer?" She said she didn't hear the question.

The Court: Well, of course he is not foreclosed by a negative answer on cross examination. It isn't like direct examination. He may pursue the matter until he is satisfied without too much repetition. Now, in this case it is just merely cross examination by calling her attention to what the defendant is supposed to have said.

Q. (By Mr. Munson): Do you recall Rollie saying to Loretta, "Tell them that you stuck a banana up you"?

A. I never heard any such thing.

Q. After this case began, Mrs. Lindsey, you heard your grandmother state that she took Loretta out of the house?

A. You mean my mother?

Q. Yes; your mother; her grandmother; that she took her out of the house and brought her down to her house. Did you or Rollie thereafter go up and make a search of Loretta's room?

A. Yes. [260]

Q. And did you find anything in the room other than, well, did you find some letters, these letters, that were sought to be introduced yesterday by the defendant, those cards; is that where you found them?

A. Yes, I did.

Q. And did you find anything else up there?

(Testimony of Victoria Lindsey.)

A. No, I did not.

Q. You didn't find any cotton wads or cotton balls in Loretta's closet, did you?

A. No, I did not.

Q. But you searched the room? A. Yes.

Q. Looking for evidence?

A. I was not looking for that type of evidence. I was looking for some, for a certain letter that I had seen prior to the charges that Loretta had made, which made me not believe her when she was making the charges.

Q. I don't blame you for trying to get in these self-serving statements, but the question was——

Mr. Ziegler: We object to that remark, if the Court please. Counsel can move to have the answer stricken, but I don't think it is fair to make a remark of that kind to this witness.

Mr. Munson: I move that her answer be stricken as being unresponsive to the question. [261]

Mr. Gilmore: And we move that counsel's remark to the witness be stricken.

Mr. Munson: I withdraw the remark.

The Court: Well, of course, the statement speaks for itself, and it is not necessary to characterize it, since on motion it must be stricken as not responsive.

Q. (By Mr. Munson): Mrs. Lindsey, did you ever ask Rollie about that "Trojan" can that Bob said he got on the rafters between his room and Loretta's room? A. I believe I did.

(Testimony of Victoria Lindsey.)

Mr. Ziegler: What was the answer? I didn't hear it.

Court Reporter: "I believe I did."

Q. (By Mr. Munson): Now, after Loretta's return from Wrangell, not too long afterwards, maybe two weeks afterwards, you had a birthday party for her, didn't you?

A. Well, we invited her for dinner.

Q. Did you give her some presents?

A. Yes.

Q. Wasn't that about the first time in four or five years that she had had a party or presents given to her on her birthday?

A. I don't recall just how long it had been.

Q. But it could have been the first time in four or five years that she was given presents on her birthday? Her birthday is September 15th; is that correct? It was [262] approximately two weeks, maybe three weeks, after she——

A. Her birthday is September 15th, but the year before I had bought her a birthday present.

Q. What?

A. It was a nylon slip, which after she left I found cut in half or torn in half.

Q. What did you buy her this year?

A. A little cosmetic, or something to keep cosmetics in.

Q. Did Rollie buy her something?

A. He picked out the gift.

Q. Oh, he picked it out.

A. I asked him, and he was downtown—with

(Testimony of Victoria Lindsey.)

three little ones; I don't get uptown very often—and he was downtown and called up and asked if I wanted anything or needed anything, so I asked him——

Q. You mean, for Loretta's birthday?

A. Yes.

Mr. Munson: No further cross examination.

Redirect Examination

Q. (By Mr. Gilmore): Just to make perfectly clear, Mrs. Lindsey; Mr. Munson inquired of you, asked of you, whether or not that at times you would inquire of Bob where Loretta and Rollie were and that he would say, "Upstairs," and then that you [263] would do nothing about it. What would be the times that he would be absent? For instance, if he and Loretta were upstairs at the same time, as I suppose happened many times—did it not? A. Yes, it did.

Q. All right. What, generally speaking, would be the length of time that they would be up there at the same time?

A. Well, it would be just a few minutes.

Q. Well, the question that was asked of you, at least my understanding of it, implied that they would be up there alone for some protracted time and that you would do just nothing about it even thought it was over a long period of time. Is that true or not true?

(Testimony of Victoria Lindsey.)

A. I didn't quite get that.

Q. Would they be up there for any long periods of time together that you knew of?

A. No, they wouldn't.

Q. Never at any time to your knowledge?

A. No.

Mr. Gilmore: I believe that is all.

Recross Examination

Q. (By Mr. Munson): Well, Mrs. Lindsey, didn't you just tell me a few minutes ago that you just don't remember whether they were up [264] there a long period of time or not, that you were too busy in the kitchen; there was so much noise that you just didn't pay any attention to them and that you never went upstairs while they were alone; at least you said that you had never gone upstairs while they were up there together; isn't that correct?

A. The last part of your question is correct.

Q. How about the first part?

A. Would you state that again?

Q. That you told me that you didn't pay too much attention to what they were doing; you were too busy in the kitchen with cooking and the kids?

A. Well, dinner didn't take too long to get, generally, so I didn't figure it was more than a few minutes that they would be up there.

Q. Well, it takes more than a few minutes to cook a supper, doesn't it? A. Yes, it does.

Q. It could take as long as forty-five minutes

(Testimony of Victoria Lindsey.)

to cook a supper and to feed three babies, or one baby?

A. I was busy.

Q. Isn't it a fact that you just don't remember, that you didn't pay any attention to it, except for the one, two or three times that you came out and asked Bob where they were and that even after you were told you never went [265] upstairs; isn't that the truth?

A. That is true; I never went up there and never paid too much attention to it.

Mr. Munson: That is all.

Redirect Examination

Q. (By Mr. Gilmore): Mrs. Lindsey, regardless of the number of times or the occasions when your husband, Rollie, and Loretta may have been upstairs, did you ever suspect or have any suspicion that there was anything wrong going on in your home?

Mr. Munson: I object, your Honor.

The Court: Well, it is obvious from her entire testimony that she never suspected anything.

Mr. Gilmore: Very well.

Mr. Munson: Is this re-redirect?

The Court: Mrs. Lindsey, you have been shown this box that has been exhibited here. Do you know what boxes of that kind contain; do you?

A. When that was presented to me, that was the first time I had ever seen a box of that sort.

The Court: But did you know what boxes of that kind contained?

(Testimony of Victoria Lindsey.)

A. After I had seen it, I knew. [266]

The Court: Somebody told you, or did you read on it? A. I read on it.

The Court: That is all.

Mr. Gilmore: That is all. No further questions.

Whereupon Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore and the jury all present in the box; and the trial proceeded as follows:

Mr. Ziegler: If the Court please, the trial has proceeded faster than we anticipated, and we have some other witnesses that we intended to have first thing in the morning, and they are not here, and we would like very much to call the other witnesses before we call the defendant.

The Court: Well, I think this trial has been dragging along interminably, and, as I said here the other day, I fear that we are going to run into Thanksgiving Day here. I lost twenty minutes yesterday, not knowing that it was going to drag out like this, and you will have to go on.

Mr. Ziegler: The Court is not willing to let it go until morning until we get those witnesses?

The Court: As long as you have any witnesses——

Mr. Ziegler: We don't want to call them out of order, but, if the Court insists on it, we will do it.

The Court: Well, the order isn't very important [267] anyhow.

Mr. Ziegler: Well, I disagree with the Court. To us it seems very important.

The Court: Well, I don't want to recess or adjourn at this time because we are going to have great difficulty getting through tomorrow at a reasonable hour.

ROLLAND LINDSEY

called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Gilmore): Will you state your name please? A. Rolland Lindsey.

Q. And where do you live, Mr. Lindsey?

A. Woodland Avenue, Ketchikan, Alaska.

Q. And what is your occupation?

A. Fisherman, logger, trapper.

Q. How long have you lived in Ketchikan?

A. Approximately fifteen years.

Q. You are married, are you? A. Yes.

Q. How many children do you have?

A. We have three of our own and two adopted children.

Q. And what are the names of your adopted children? A. Bob and Loretta. [268]

Q. And when did you adopt those children?

A. It was either in 1946 or '47; I am not sure of the year.

Q. Now, what ages were they, respectively, approximately?

A. Loretta was between seven and eight, and Robert was eleven, I believe.

Q. Now, during the time that you had Bob and

(Testimony of Rolland Lindsey.)

Loretta, or let's confine it to Loretta, have you had some trouble with raising Loretta in your household? A. We certainly have.

Q. Has Loretta been caught by either you or your wife in thefts in your home?

A. Yes, she has.

Mr. Munson: I object, your Honor. The witness should be instructed not to answer until the objection is completed.

The Court: The answers are stricken, as before questions of that type can be asked you have got to lay the foundation by asking whether the witness is hostile, otherwise it may become absolutely immaterial.

Mr. Gilmore: Well, your Honor, I will ask that question.

Q. (By Mr. Gilmore): Mr. Lindsey, do you know whether or not your adopted daughter, Loretta, has acquired a hostile feeling toward you?

A. I do. [269]

Mr. Munson: I object to that, your Honor, on the ground——

The Court: It has got to be before the bringing of these charges.

Mr. Gilmore: Very well.

Q. (By Mr. Gilmore): Was it acquired before the bringing of these charges? A. It was.

Q. And can you explain the reasons why she acquired this hostility toward you, and tell us over what period of time it existed?

Mr. Ziegler: Now, just a minute, Mr. Lindsey.

(Testimony of Rolland Lindsey.)

Let me interject this. Don't answer any questions until counsel for the Government has an opportunity to object.

Mr. Munson: I object for this reason, your Honor, that this witness is being asked substantially the same impeaching questions that were asked the other defense witnesses, none of which have had a foundation properly laid.

The Court: But he is not calling for any conversation by this question. He can testify, the witness can testify to acts, as distinguished from conversation, from which acts hostility might be inferred, and of course no conversation could be—he could be asked about no conversations that Loretta had not been asked about.

Q. (By Mr. Gilmore): Now, Mr. Lindsey, with reference to [270] the hostility that was acquired towards you by Loretta, can you name some specific acts that might have led to that feeling on her part toward you?

A. Well, I just want to be sure that I can answer the question in court.

Q. All right. You may answer it.

A. Yes. Do you mean to say from stealing, lying?

Q. Yes. Now, have you ever had to discipline Loretta?

A. Very many times.

Mr. Munson: Your Honor, I object. This man is the girl's adopted father.

The Court: Before he can relate such things as instances of stealing and all that, he has got to

(Testimony of Rolland Lindsey.)

show by his testimony that she is hostile because of these things because of what he did, otherwise he is just simply saying something for the purpose of getting other evidence in. In other words, he has got to show how he knows that she is hostile or was hostile toward him before bringing the charges.

Mr. Gilmore: All right.

Q. (By Mr. Gilmore): Now, have you had occasion to discipline Loretta during the years that she has lived with you? A. Yes.

Q. And tell the jury some of the instances or some of the acts that were committed that led to the necessity for your taking her to task. [271]

Mr. Munson: Your Honor, I don't believe that this question is in accordance with the Court's ruling on hostility.

Mr. Gilmore: I am trying, your Honor. It is the discipline that was enforced, the rigid discipline that was enforced, the hostility that followed.

Mr. Munson: Now, then, counsel is testifying for the defendant, your Honor.

Mr. Gilmore: No, I am not. He said those very things, counsel.

The Court: Well, the acts have got to be, of course, something from which it would be reasonable to infer hostility, and just ordinary acts of discipline would hardly have that tendency, and it seems to me they ought to be accompanied by testimony showing that Loretta was by her conduct and attitude hostile toward him.

Mr. Gilmore: Well, I am trying.

(Testimony of Rolland Lindsey.)

The Court: Just like, he could correct her for something he said here about stealing, and maybe she would feel more penitent than hostile if she was caught in a theft or something, so there has to be something that would indicate open hostility on her part.

Mr. Gilmore: I know, but I have just been trying to develop that by showing that she was disciplined and severely on numerous occasions and the reasons, the occasions for it, and then the hostile feeling that was acquired toward [272] her father.

The Court: The showing of hostility should come first before you begin putting in evidence of acts of that kind.

Mr. Gilmore: Well, except that——

The Court: Otherwise the witness could be greatly prejudiced by putting in evidence of various acts, and then you fail to show hostility.

Mr. Gilmore: Sure, your Honor; but I thought he just testified that there has been over a period of years a feeling, a strong feeling of hostility.

The Court: Yes, he did testify to that, but that is just, you might say, a categorical answer. He has got to show first why she was hostile. In other words, he has got to testify to more than that there was a feeling of hostility. He would have to show what evidenced that hostility. In what way did she show that hostility?

Q. (By Mr. Gilmore): Go ahead and tell us that now. In what way over the years, starting

(Testimony of Rolland Lindsey.)

when she was young, did she evidence hostility towards you, such as you testified?

A. She ran away many times.

Q. And what were the reasons for it?

A. Her excuse for that was that her folks were too strict with her. [273]

Q. And what would happen to her when she came home from running away?

A. We would talk to her and try to explain to her that she had to do certain things and quit doing certain things that she had done. I spent hours with both of the children and talking to them at the supper table.

Q. Was she disciplined and restricted?

A. She was.

Q. And how did she take it?

A. They could look right through you, and you wouldn't know how they was taking it.

Q. Which resulted in what kind of a feeling or relation towards you? In other words, did she acquire a respect for you after you disciplined her, or was it some other feeling?

A. I don't quite understand the question the way you put it, Mr. Gilmore.

Q. Well, it is simply this. After you would discipline her and catch her in these acts and after she would return to home from running away, and you restricted her and disciplined her, would her feeling after that be repentance, or would it still be hostility?

A. She would turn around and do the same

(Testimony of Rolland Lindsey.)

things again. It would be only just a short time, and she would do that.

Q. Was she obedient to you, or disobedient?

A. Disobedient.

Q. Did you ever catch her in any actual thefts of substantial sums of money from your home?

Mr. Munson: I object, your Honor. He still hasn't shown any hostility.

The Court: The difficulty, as I see it here, of showing hostility is that, while acts of this kind were they to be such from which hostility might be inferred in the case of a third person who made an accusation, here it is a foster child of the defendant, and all these incidents to which he is testifying so far are the ordinary, or it seems to me the ordinary, incidents of childhood, and they are not, it seems to me, standing alone without more, sufficient to warrant an inference of hostility.

Mr. Gilmore: Except it could be shown they are extraordinary, I think, your Honor, that this witness will testify to.

The Court: Well, for instance, suppose that we had the case of a girl unrelated to the defendant, and he could certainly show that he slapped her one day down the street for, perhaps, no good reason, and she has been hostile to him, and anybody could reasonably infer hostility from that, but, if he says he slapped his own foster daughter in the course of enforcing discipline within his own home, why, it certainly doesn't have any tendency to establish

(Testimony of Rolland Lindsey.)

hostility. That is the [275] difficulty. So it seems to me that you would have to show more than the ordinary incidents that occur in the lifetime of practically every child.

Q. (By Mr. Gilmore): Did she ever threaten to leave your home and at the same time tell you and your wife that she was going to her real mother or going to some other relative or something like that in defiance of your parental authority?

A. She did.

Q. Well, tell us of an instance?

A. She has always——

The Court: Well, I think that, before he is allowed to testify about these incidents any more, you will have to show that there was hostility at the time of bringing this charge, otherwise the presumption would be that any child would get over any feeling of resentment as a result of punishment.

Q. (By Mr. Gilmore): Did this situation that I have just asked you about, and that is with reference to her threat to leave your home and go with her real mother or some other relative, exist prior to the bringing of these charges against you?

A. Yes.

The Court: It should be—exist right up to the bringing of the charges. [276]

Mr. Gilmore: Pardon, your Honor?

The Court: Prior to bringing the charges might be two years before the charges. It has got to exist at the time of bringing the charges.

Q. (By Mr. Gilmore): But continued up to—

(Testimony of Rolland Lindsey.)

it was a continuous feeling, was it, or was it not?

A. It was.

Q. A continuous feeling of hostility that existed and continued to exist? A. Yes.

Mr. Munson: I object to counsel's leading this witness, your Honor.

The Court: But you are too late with your objection. He has already answered it.

Q. (By Mr. Gilmore): Now, go ahead and relate the specific instance, as you recall it.

A. Well, the first one that was of importance that I remember was the second year we had them.

The Court: Well, that is too remote now, unless you can show by independent evidence that from the second year that she was in defendant's house something happened and as a result thereof she was hostile right up to the time of bringing the charges, and I think that that is pretty farfetched.

Mr. Ziegler: Well, if the Court please, I would suggest that we go from the first instance, around the date [277] of the bringing of the charge, or at the date of the bringing of the charge, or just prior to it, and then go backwards, and then we can tell whether it is too far.

The Court: Well, in order to avoid blackening the character of this witness, I have got to insist that you show hostility at the time of bringing the charge and then show what the hostility flows from.

Mr. Ziegler: I think that has been established. if the Court please, testified to.

(Testimony of Rolland Lindsey.)

The Court: Well, but he was trying to go back about——

Mr. Ziegler: He was going to the first time, and I suggested that he take the last time and go backward, and then he can stop whenever——

Mr. Gilmore: Well, I will try to comply with the Court's ruling.

Q. (By Mr. Gilmore): Now, shortly prior to the bringing of these charges and while this hostile condition existed, was there something that indicated to you or do you know of something on Loretta's part whereby she planned or schemed to leave her parental home, to leave the home of you and Mrs. Lindsey, to leave and to go away to live with somebody else, and who that was, if you know; do you know of such an instance? A. Yes.

Q. Will you tell us about when it was with reference to the [278] charge that she made against you, and then what it was?

A. Well, she has always wanted to go to Betty Kohler's. That was her stepmother that had her before we had her, who is my wife's brother's wife. She has always told me that she was going to leave home when she was eighteen. She always said that. And about three weeks before or two weeks—I am not too positive of the time—but it was near the time, just before she accused me of this. Neither one of them had any respect for their mother. They never have shown it.

Mr. Munson: I object to that, your Honor.

(Testimony of Rolland Lindsey.)

Mr' Ziegler: That is part of the hostility, I think.

The Court: I don't think it is.

Mr. Ziegler: Showing what he did in conjunction with the attitude toward the mother.

The Court: Why, the threat, if you can call it a threat, of a girl to leave home when she is eighteen, how that could constitute hostility, I can't see.

Mr. Gilmore: But the threat continued, we are going to try to show, your Honor.

The Court: But it isn't anything wrong in itself. A girl has a right to say she will leave home when she is eighteen. There is nothing wrong about that.

Mr. Gilmore: It was just part of her defiant attitude, her hostile attitude, just one instance, that is, the [279] threat to go to some other home.

Mr. Munson: Well, your Honor, I also object to any statement by this witness as to Robert or Loretta's attitude or feeling toward, of hostility or whatever he tried to show, toward Mrs. Lindsey as being immaterial.

The Court: Yes; anything like that is immaterial.

Q. (By Mr. Gilmore): Do you know of any instances shortly before she charged you or any evidence that exists that she had her suitcases packed and that she had money prepared to provide for her going away from your home?

Mr. Munson: Objected to as immaterial, your Honor.

Mr. Gilmore: It shows her ability to carry out

(Testimony of Rolland Lindsey.)

the threats, that they aren't idle and they are real.

The Court: But the difficulty with them is, as I said before, that the wish to leave home is certainly not necessarily indicative of hostility. I can't see how it could be indicative of hostility. She may be dissatisfied and discontented, but that doesn't mean that she is hostile to where she would go out and accuse somebody.

Q. (By Mr. Gilmore): Well, anyway, this feeling, Mr. Lindsey, existed at the time the charges were made against you and prior to that for a number of years? A. That is right.

Q. The same feeling and attitude?

Mr. Munson: Does that mean this feeling about [280] leaving home?

Mr. Gilmore: No. The feeling of hostility toward her adopted father.

Mr. Munson: I haven't heard anything that indicated that yet.

The Court: Well, he answered the question that she was hostile, but he still has to support it by some proof.

Q. (By Mr. Gilmore): All right. Just go on and tell us now in support, that is, going back from the time the charge was made by her against you, and besides the instance that you have related, which continued over a period of time, whether or not there were other instances which resulted in disciplining her by you and what they resulted from?

A. This is just prior to the time also. Now, as

(Testimony of Rolland Lindsey.)

you know, I am a fisherman, and I am out and I am in.

Mr. Munson: I object to this narrative.

A. The people should be explained to why I am not at home all the time. I am only there about——

Mr. Munson: I insist that the witness answer the question.

The Court: You have to answer the question that was asked you.

Mr. Ziegler: I think he was answering the question. He might have made some preliminary statements, but I think he [281] has been answering the question.

The Court: Well, it has got to be a direct answer to the question over the objection of counsel. If counsel doesn't object, why, he can ramble, but otherwise over the objection of counsel it has got to be a direct answer.

Q. (By Mr. Gilmore): Well, explain the incident without the details.

A. When I would come home from my trips and come in the house, the first thing that would happen when I walked in the front door was a big family fight.

Mr. Munson: I object now. Are you referring to a single incident just prior to this charge, or where you referring to numerous instances?

A. Numerous of the same type.

Mr. Munson: I object, your Honor, on the ground that they are immaterial.

(Testimony of Rolland Lindsey.)

A. Well, I can tell each one, which will take more time of the Court.

The Court: Well, do you mean to testify that after each one of these incidents that you have in mind, to which you refer, that Loretta got mad and that she remained mad and hostile and never got over it? Did she ever act friendly toward you after these incidents, or did she remain hostile all the time?

A. Naturally, she didn't remain hostile all the time, but [282] she was mad at me at the time, and, after the wife had told me about these things that she had done and the things that she had taken upstairs or that had disappeared; and then she would tell us that she didn't take them, the wife would ask me to go up and look for those things, and I would go up there and look for them and I would find them about nine-tenths of the time, and the hostility was there. She would be mad, and I would have to restrict them.

The Court: But she would get over it?

A. Well, sometimes it would be a period of time before she would, and it would depend on how serious the thing is that she had done. She stole money from us and as much as a hundred dollars at a time and gave it to the kids at school in twenty-dollar bills, and I had to be real rough that time, as I mean to say, our restrictions were deeper then.

The Court: Well, wouldn't she feel penitent then, just the opposite of hostile?

(Testimony of Rolland Lindsey.)

A. Sometimes she did, and sometimes she didn't.

Mr. Munson: I move that the entire testimony that the defendant just gave be stricken on the ground of immateriality.

Mr. Gilmore: I think it is perfectly proper. It is showing the course now, if the Court please, and it is still [283] preliminary and still on the same subject matter, and I think it is just exactly what the Court contemplated.

The Court: No. It seems that this hostility was not continuous, and it would take continuity to make admissible all these incidents. The evidence of hostility will be limited to acts committed within one month previous to the initiation of these charges. Anything else is too remote under the testimony of the defendant himself that the witness would get over these things.

Q. (By Mr. Gilmore): Tell us, Mr. Lindsey, whether or not you feel down in your heart that the feeling of hostility continued and prevailed, even though outwardly, after this strict discipline that you gave her, whether she on the surface or outwardly might appear friendly, and whether you felt she still had a feeling of hostility for you?

Mr. Munson: I object. This calls for a conclusion.

Mr. Gilmore: He knows. Nobody knows better.

The Court: It isn't how he feels. It is whether there was something that happened from which any body could infer hostility.

(Testimony of Rolland Lindsey.)

Mr. Gilmore: But wouldn't he know too, your Honor. He was there every day with her.

The Court: He would know, but his knowledge, just merely a statement of his knowledge would be a bare, self-serving [284] statement without anything to support it.

Q. (By Mr. Gilmore): Did you, besides the instances that you have mentioned, take her to task, and let's confine it to the time that the Court just ruled on, a month prior to the bringing of the charges against you by Loretta, have to take her to task because of her personal uncleanness and the condition of her room with reference to orderliness?

Mr. Munson: I object——

Q. (By Mr. Gilmore): Don't answer now until the objection is ruled on.

Mr. Munson: I object to the form of that question and the substance of it.

The Court: Well, I just don't see how any child would be hostile because she is asked to clean up, but, if——

Mr. Gilmore: This is an unusual—excuse me, your Honor.

The Court: But, if you can follow it up by showing that, as a result of asking her to wash up, she became hostile, why, you can do it, but you will have to show that she became hostile, otherwise it is just cluttering up the record.

Mr. Gilmore: Yes; but this is more than just

(Testimony of Rolland Lindsey.)

washing up, brushing her teeth, or something. There is something else here.

Mr. Munson: Those facts are not in evidence, your [285] Honor. No one has testified to them, except as they are embodied in the question of counsel.

The Court: Well, I think I have made my ruling clear, that the showing of hostility has got to be limited to thirty days before the initiation of the charges and they have got to be acts that would tend to show hostility.

Mr. Gilmore: Well, I think I can, your Honor. I am not trying to evade the Court's ruling. I am sure I understand it, and I am sure, and I submit to your Honor, that there are extraordinary conditions that don't exist under usual and normal circumstances with reference to the thing that I am about to bring out.

The Court: Well, it might be that they are extraordinary, but that isn't the question here, whether these acts are extraordinary, but whether Loretta Lindsey became hostile and continued in that hostility and the hostility was sufficient to constitute a motive for bringing these charges.

Mr. Gilmore: Well, maybe I am putting the cart before the horse again. I know that they resulted in hostility, and now I am trying to show the things that caused the hostility.

The Court: Well, but it isn't enough that you know it. This witness has got to show it.

Mr. Gilmore: All right.

Mr. Ziegler: I would like to be permitted to be

(Testimony of Rolland Lindsey.)

[286] heard, if the Court please. After all, isn't it a question for the jury to decide from these acts that he testifies to or whether it can be inferred from those acts and what occurred there was hostility.

The Court: But that isn't the problem. The problem here is to get facts before the jury that would have some value in that respect. The fact that you want the jury to conclude something doesn't open the gate to everything.

Mr. Ziegler: Well, I think it is a question for the jury to infer whether the acts were such as to create hostility.

The Court: But it is the province of the Court to first determine whether the evidence is relevant and competent for that purpose. I have already ruled that, in view of the complexion that this particular testimony has taken, it will be limited to thirty days previous to the initiation of the charges and that incidents, of the kind from which it would be reasonable to infer hostility, only may be testified to.

Q. (By Mr. Gilmore): Having the Court's ruling as to the time limitation in mind now, do you feel or do you know whether or not she was hostile to you as a result of your having to take her to task with reference to the condition of her room and her personal cleanliness? A. I do.

Q. All right. [287]

The Court: Now, the next question is—how do you know it? How did she show it?

(Testimony of Rolland Lindsey.)

A. Well, your Honor, now I want to answer these questions right without bothering the Court, and is it permissible for me to tell what is in that room and what I did about it?

The Court: I am asking you the question now. How do you know that she was hostile as a result of that particular act of correction or discipline?

A. I just don't understand the question in that manner.

Mr. Ziegler: In other words, how did she act toward you after you did these things? How did she act toward you? Was she mad?

Mr. Gilmore: Her reaction.

A. Well, certainly, she was mad. Every time I corrected her she got mad.

The Court: But she also got over it; is that it?

A. There were periods of time that she—in the last—you allow me a month, and there was a greater difference than there had been before in her actions. She wasn't—I don't know—she didn't answer me in the same manner. She didn't answer her mother in the same manner. She kept getting more hostile in her answers and her manners.

The Court: That is in the month before these charges were brought? [288]

A. Yes, sir; that is in the month before. I can't go farther back than that, so that is what I am trying to do now. At one time during this month before, she had talked in a very bad manner to her mother in the kitchen one evening while she was doing dishes, and it was as bad a nature that I

(Testimony of Rolland Lindsey.)

slapped her, which I did very seldom. If I can only go back a month, that is the only time within the month that I had ever touched her.

Mr. Ziegler: Well, was she mad at you on account of the slapping?

A. Certainly she was mad at me.

The Court: Then, as I understand it, your testimony is that she was hostile to you, and the hostility was not due to what you did to her that she testified you did but to acts of correction; is that it?

A. That is right, sir.

Q. (By Mr. Gilmore): And did that feeling, the hostile feeling prevail? Did it continue? Did she continue to hold you in contempt, and, defiant, was she defiant of your parental authority?

Mr. Munson: Objected to as leading, your Honor.

Mr. Gilmore: I don't know how it can be leading. The answer to the question——

The Court: You can ask whether she was hostile from the time that this incident occurred of slapping her in [289] the kitchen up to the time of the initiation of the charge.

A. You ask me that question? Yes, she was.

Q. (By Mr. Gilmore): She was?

The Court: Well, how did she show that? How did she show that she was hostile continually after you slapped her that time?

A. By her actions, by the way she acted around home towards me when I was there. Of course I was there very little, sir. I have a logging camp and I was in camp most of the time, but, her atti-

(Testimony of Rolland Lindsey.)

tude when I came home, I knew there was something wrong but I didn't know what it was. She had a different attitude towards me for the last month that we were there, and in fact before then but I can't say those things, you said.

Q. (By Mr. Gilmore): Would you say that she was generally and continuously defiant of you?

A. She was.

Q. And of your parental authority?

A. She was.

Q. Within the same time limitation now, Mr. Lindsay, did she, was she hostile towards you over your bringing her to task about her personal uncleanliness and the condition of her room with reference to her clothes up there within the time limit?

Mr. Munson: Your Honor, I object to these leading [290] questions. All the witness is doing is saying yes and no.

The Court: Yes; this last question is leading. You can ask if there was some further incident.

Q. (By Mr. Gilmore): Were there some further instances, Mr. Lindsey, within the time limitation, that is, within a month prior to bringing the charges, other than what you have mentioned, that is, about the way she spoke to her mother and threats about running away from home; were there other instances?

A. Well, there were instances of the things that she left in her room that I had found up there and——

(Testimony of Rolland Lindsey.)

Q. Did those things that you are about to tell about result in your taking her to task about that situation?

A. They certainly did. I found her night clothes with blood spots that big on them. I found her pads, that a woman uses——

Mr. Munson: I object to this, your Honor, as going into——

The Court: Well, the details of it are not so material. The question is whether, as a result of what you did to her because you found this condition, you created hostility.

A. I certainly did.

The Court: Well, what did you do as a result of the condition you say you found? [291]

A. In the way of correcting her, you mean?

The Court: Whatever you attribute the hostility to.

A. I spoke to them and I talked to them for hours at the table, at different times, not an hour at a time, but, when we would be at the dinner table in the evening, I talked and talked to both of them, and I talked to her about this at the time that I found them upstairs, and I asked her what, well, the conditions, how a girl could let herself go like that, and she was getting bigger all the time and ought to clean herself up, and she was getting to be a woman and that those things she just had to stop doing, and I got after her about it. I never did hit her about it, sir; I never slapped her about those things; but we did restrict her from dances

(Testimony of Rolland Lindsey.)

at the church or shows or anything that would cause her to feel that she was punished for it, and she would never admit that it was wrong or anything of that nature. She would just stand there and look at me, and that is the way I——

The Court: Well, but how did she show her hostility—by not saying anything?

A. No, not by not saying anything; but the way she looked at me, is one way, and disregarding my orders as to what she was to do.

The Court: Well, then do you mean to say that she showed her hostility by the way she looked at you? [292]

A. It certainly was one way.

The Court: Well, I wondered whether——

A. In other words, I mean that it was a very mean look, and it was just as much as to say “What are you going to do about it?” That is the way she would look at me and the way she always looked at me, or he did when I tried to correct him.

Q. (By Mr. Gilmore): Well, it was just an outward manifestation of defiance to you, was it?

A. It certainly was.

Q. And did her disobedience continue?

Mr. Munson: I object to it as leading, your Honor.

Q. (By Mr. Gilmore): Or did she acquire a respect for you because of this discipline?

A. I don't know how to answer that, sir.

Q. I think you testified previously that this defiant attitude continued, and I want to know if that is still your answer.

(Testimony of Rolland Lindsey.)

A. That is still my answer, absolutely.

Q. Are there other instances along the lines, and within the time limitation, that we are talking about that you can tell us?

A. No, sir; not in that length of time, I can't tell it.

Q. Besides a general feeling?

A. Just a general feeling, because in that month that he [293] allows me I think I was in probably two days. As I say, I have a camp; I am not at home.

Q. Where do you live in Ketchikan?

A. On Woodland Avenue, 1067 Woodland Avenue.

Q. And that is your own home?

A. It is my own home.

Q. What size home is it? How many rooms in it?

A. There are four unfinished rooms on the main floor—four finished rooms on the main floor; I had in mind that the upstairs is not finished and when the upstairs is finished there will be four rooms up there; and then I have a large cement basement.

Q. Now, Mr. Lindsey, could you draw a sketch of the floor plan on this board, if you were asked to, the floor plan of your house?

A. I don't know how good it will be but I could do it and I believe they would understand.

Q. Will you step down here, and we will pull out this board a little bit.

Mr. Ziegler: If the Court please, if we had a little more time—what I have in mind is this, that

(Testimony of Rolland Lindsey.)

between now and morning he could take the time to draw this and wouldn't take up the time of the Court right now. He would have to make it very hastily now.

The Court: That isn't going to give us more time [294] tomorrow. I was about to inquire if there is any objection to going on to 5:30, otherwise we are going to run into Thanksgiving with this case.

Mr. Ziegler: Well, if the Court wishes it that way, we are in no position to object to it, naturally. If that is the Court's desire, we will have to do it.

The Court: Well, I don't want the jury out over Thanksgiving, and I am sure the jury doesn't want to be out over Thanksgiving, and Friday morning I have got the Madsen case set with about fifteen new jurors coming in.

Mr. Ziegler: Well, I don't think any time will be lost by this. I would rather have this done now and start in at 9:30 in the morning, Your Honor, and that way I think we will save time for the Court.

The Court: I think we better go on for another half-hour unless some juror will be greatly inconvenienced.

Q. (By Mr. Gilmore): Go ahead then.

The Court: We will go on until 5:30.

A. (Stepping down to the blackboard and drawing upon it) This is the front entrance to my home. The steps lead up this way, out to the gate, and this is the front porch, and then there is a door that leads

(Testimony of Rolland Lindsey.)

into the front room. I can't draw one of these houses the way an architect can, but I will do what I can. Now, this will be the bottom floor of the home, and this is the—that [295] is the best I can do—this is the front room, which is approximately 15 by 24. This is the kitchen, which is approximately 13 by 15. This is the bathroom, which is approximately 6 by 9. This is the entrance and where the stairs go up here and change and go up this way. This is the master bedroom where we sleep, a closet of that nature, and a door here, and this is the other bedroom, which is small. Shall I erase this and——

Mr. Ziegler: Leave that there, and put the other down below that.

Q. (By Mr. Gilmore): And indicate the stairway where it goes upstairs.

A. Here is where it goes up; come in this door and go upstairs. If you can see this, this is where the stairs come up, right here. This was Robert's room. This is all unfinished. This is Loretta's room—closets—the doors are not on, just openings in these rooms. This one, this closet has no door, but these three do have, and, as I said, this is not finished, but it was all wired.

The Court: Well, we don't need to go into those details. He has the rooms shown on there now. That is all that is relevant.

Q. (By Mr. Gilmore): Are there doors to the bedrooms there ?

A. Robert's is here, and Loretta's is here, al-

(Testimony of Rolland Lindsey.)

though I never [296] did have a door that I hung on this bedroom. Loretta's room had no door, but Bobby's has.

Mr. Munson: Where is the stairway on the second floor?

A. The stairway comes up right up here, as such.

Mr. Munson: I mean, where does it cut into the second floor?

A. Right in front of this closet. This should be flat, and walk upstairs and enter this part of the house, and this door that is here has a crack approximately that wide on each side of it that doesn't have any filling. It has never been finished.

Q. (By Mr. Gilmore): Now, on the rooms on the main floor, Mr. Lindsey, just mark them "BR" for bedroom on the right. Is that your bedroom—"BR"? And another bedroom, and kitchen, and living—front room.

A. This is the bedroom, and this is a bedroom, and closets.

Q. And the stairway leading up from the first floor to the second floor.

The Court: I think there is only one stairway. He doesn't have to mark that.

Q. All right. You may resume the stand.

Mr. O'Connor: May we ask one more question before he goes up? What portion of the downstairs is covered by the upstairs now? Would you draw a line across on your lower [297] floor plan

(Testimony of Rolland Lindsey.)

to show where the upstairs is in relation to the downstairs?

A. It is just the same size.

Mr. Munson: Then how could the stairway be outside on the——

A. It isn't outside. This—I am not an architect. This goes in through here, as I have explained, into this, into this part of the house. The wall is here. This goes in and goes upstairs, and I should have, I guess, put it this way. That would be better. There is no outside entrance on this side of the home.

Mr. Munson: Then the stairway cuts into the floor at some point away from the wall?

A. That is true; right next to Robert's room.

Q. (By Mr. Gilmore): You may resume the stand; will you please?

A. (Resumed the witness stand.)

Q. What year did you and your wife adopt Loretta?

The Court: There is no dispute about that either. It is in evidence.

Mr. Munson: He already testified to that.

The Court: Yes.

Q. (By Mr. Gilmore): Well, was your house this way when Loretta was adopted?

A. No. [298]

Q. It was not?

A. It was not.

Q. Well, where did Loretta sleep prior to the reconstruction of your house?